



INITIAL STATEMENT OF REASONS
FOR THE PROPOSED ADOPTION OF REGULATIONS
UNDER THE CALIFORNIA CONSUMER FINANCIAL PROTECTION LAW AND THE
CALIFORNIA FINANCING LAW, CALIFORNIA DEFERRED DEPOSIT
TRANSACTION LAW, AND CALIFORNIA STUDENT LOAN SERVICING ACT
PRO 01-21

As required under Government Code section 11346.2, subdivision (b), the Department of Financial Protection and Innovation (DFPI) has prepared this initial statement of reasons for the proposed adoption of regulations under the California Consumer Financial Protection Law (CCFPL) and the California Financing Law (CFL), California Deferred Deposit Transaction Law (CDDTL), and California Student Loan Servicing Act (SLSA). The proposed regulations would adopt:

- Registration and reporting requirements for income-based advance, education financing, debt settlement, and student debt relief providers under the CCFPL;
- Requirements for exemption from registration under the CCFPL for licensees under the CFL, the CDDTL, and the SLSA; and
- Requirements under the CFL for advances to be repaid with earned income, and related rules for income-based advances, single-payment loans, subscription fees, tips, income-based repayment programs, and forbearances.

PROBLEM TO BE ADDRESSED AND ANTICIPATED BENEFITS (§ 11346.2, subd. (b)(1))

In September 2020, Governor Gavin Newsom signed Assembly Bill 1864, which codified the CCFPL in division 24 of the Financial Code and vested the DFPI with authority to administer and enforce its provisions.¹ The CCFPL empowers the DFPI to “prescribe rules regarding registration requirements applicable to a covered person engaged in the business of offering or providing a consumer financial product or service...”² In connection with registration, the DFPI may require registration fees, rules to facilitate oversight of covered persons and detect risks to consumers, rules requiring registrants to obtain and provide records and produce reports, rules to ensure a covered person is a legitimate entity that can perform its obligations to consumers, and rules identifying unlawful, unfair, deceptive, or abusive acts and practices.³ The CCFPL also empowers the Commissioner to “investigate, research, analyze, and report on markets for consumer financial products or services.”⁴

In enacting the CCFPL, the California Legislature found that “[u]nfair, deceptive, and abusive

¹ Assem. Bill No. 1864 (2019-2020 Reg. Sess.) §§ 4, 7; see generally Fin. Code, § 90000 et seq.

² Fin. Code, § 90009, subd. (a)(1).

³ Fin. Code, § 90009, subds. (b) & (f).

⁴ Fin. Code, § 90006, subd. (d)(2).

practices in the provision of financial products and services undermine the public confidence that is essential to the continued functioning of the financial system.”⁵ The Legislature also found that unregulated financial services can leave “consumers vulnerable” and force “California business to compete with unscrupulous providers” and that “financial victimization of economically vulnerable consumers, including individuals who lack a safety net, not only harms the individual but also has a broader social and economic cost on all of California, and could lead to increased caseloads for social safety net programs.”⁶ To address these concerns and others, the CCFPL was enacted “to strengthen consumer protections by expanding the ability of the Department of Financial Protection and Innovation to improve accountability and transparency in the California financial system...”⁷

Problem Statement

The CCFPL does not specify the registration, reporting, or other requirements for covered persons and authorizes the DFPI to prescribe these requirements by rulemaking. Through the proposed regulations described herein, the DFPI proposes to exercise its powers to require registration and reporting for providers of four products and services: Debt settlement, student debt relief, education financing, and income-based advances. The industries providing these products were selected for registration in part because they each serve economically vulnerable populations. Debt settlement and student debt relief providers necessarily serve “economically vulnerable consumers,” because providers’ clients are people struggling to pay their debts.⁸ Similarly, both student debt relief and education financing providers serve students, a population that the Legislature specifically identified as a “vulnerable population” when it described its intent in enacting the CCFPL.⁹ It appears that income-based advance providers similarly serve economically vulnerable populations living paycheck-to-paycheck who have limited alternatives for short-term cash.¹⁰

The proposed regulations are intended to strengthen consumer protections in the financial services industry, particularly for vulnerable consumers. By requiring certain financial services providers to identify themselves and examining those providers for compliance with consumer financial protection laws, the DFPI will help protect California consumers. Data collected by providers will inform the DFPI’s examination priorities, assist the DFPI in identifying consumer risks, and ensure that providers are able to perform their obligations to consumers. The data will also help the Commissioner research, analyze, and report on markets for consumer financial products or services.

Financial Code section 90009, subdivision (a)(2)(A), of the CCFPL exempts certain licensees

⁵ Fin. Code, § 90000, subd. (a)(2).

⁶ Fin. Code, § 90000, subd. (a)(1).

⁷ Fin Code, § 90000, subd. (a)(4).

⁸ Fin. Code, § 90000, subd. (a)(1).

⁹ Fin. Code, § 90000, subd. (a)(4).

¹⁰ See, eg., Letter from MoneyLion, Inc. (December 23, 2021) (Noting that wage-advance services allow “consumers to cover general living expenses or unexpected costs without subjecting themselves to overdraft charges, credit card fees, or the need to resort to expensive payday loans...”); Letter from Payactiv (December 20, 2021) (describing earned wage access products as a solution for low-income consumers, including millions of Americans who do not have savings to cover unexpected expenses); and Letter from DailyPay (December 20, 2021) (describing earned wage access as a substitute for payday loans and overdraft fees).

who provide consumer financial products or services “within the scope of” their DFPI licenses. The CCFPL, however, does not specify which licensees are exempt from registration or prescribe the requirements for exemption. The proposed regulations specify that licensees under the CFL, CDDTL, and SLSA would be exempt from CCFPL registration and provide the conditions for exemption, including notice and reporting requirements.

Over the past decade, several new consumer financing products have emerged wherein financing providers offer advances to consumers to be repaid from consumers’ wages. These products include, but are not limited to, earned-wage advances and income-share agreements. The providers of these products have generally maintained that they are not subject to any existing consumer credit laws or regulations. Proposed section 1461 clarifies that such products, and any other products to be repaid from a consumer’s wages, salary, commissions, or compensation for services, are subject to the California Financing Law and its related consumer protections. The DFPI also proposes to adopt section 1462 to provide an alternative to CFL licensure for certain advance providers who register with the DFPI under the CCFPL and collect charges no greater than the charges they would be permitted to collect under the CFL. Sections 1463 through 1466 are designed to clarify certain CFL requirements for providers of earned-wage advances and income share agreements. These proposed regulations are issued pursuant to the Commissioner’s authority under Financial Code section 22150, which empowers the Commissioner to “make general rules and regulations... for the enforcement of... and within the general purposes of” the CFL. The Legislature has directed the DFPI and the courts to interpret the CFL “liberally” to “ensure an adequate supply of credit to borrowers,” “to simplify, clarify, and modernize the law governing loans,” “to foster competition among finance lenders,” and “to protect borrowers against unfair practices of some lenders, having due regard for the interests of legitimate and scrupulous lenders.”¹¹ The DFPI proposes to adopt the CFL regulations with these goals in mind.

Benefits Anticipated from Regulatory Action

The benefits anticipated from these proposed regulations include an increase in consumer welfare, fair competition, and wealth creation in California.¹² The proposed regulations will promote nondiscriminatory access to financial products and services that comply with applicable laws.¹³ These regulations will promote the welfare of California residents and foster fair competition among businesses. The proposed regulations are also expected to increase accountability and transparency in the marketplace, which strengthens consumers’ confidence and financial stability, which is essential for building wealth.

The DFPI anticipates that the CFL regulations will benefit consumers and protect them from unfair practices by clarifying that the CFL’s protections apply to advances secured by a consumer’s wages. The regulations will also benefit consumers and businesses by clarifying the law with respect to subscription fees, tips, single-payment collections, repayment plans, and education forbearances; and fostering competition between lenders by permitting lenders to use various revenue models, including those based upon transaction-based fees, tips, and

¹¹ Fin. Code § 22001, subd. (a)(1)-(4).

¹² Fin. Code, § 90000, subd. (b).

¹³ Fin. Code, § 90000, subd. (b)(2), (b)(3).

subscription payments.

ECONOMIC IMPACT ASSESSMENT (§§ 11346.2, subd. (b)(2)(A), 11346.3, subd. (b))

A. Creation or Elimination of Jobs Within the State

The Commissioner has determined that this regulatory proposal likely will not have a significant impact on the creation or elimination of jobs in the State of California. The proposed regulations are largely intended to provide the application process and requirements for certain existing financial services providers to register with the DFPI.

B. Creation of New Businesses or Elimination of Existing Businesses Within the State

The Commissioner has determined that this regulatory proposal likely will not have a significant impact on the creation of new businesses or the elimination of existing businesses in the State of California. The proposed regulations do not provide direct economic or other incentives to create jobs or expand business. The Commissioner anticipates that the costs (in the form of assessments, examinations, and reporting) imposed upon registrants under the regulations will be absorbable by those businesses and will likely not result in the elimination of existing businesses.

C. Expansion of Businesses Currently Doing Business Within the State

The Commissioner has determined that this regulatory proposal is unlikely to result in the expansion of businesses currently doing business in California. The regulatory proposal will require existing businesses engaged in providing income-based advances, education financing, debt settlement, and student debt relief services to register with the DFPI and provide annual reports. The regulations also include clarifications as to how certain financing products may be offered lawfully under California law, but the Commissioner does not anticipate that these clarifications, taken together, will result in an expansion or reduction of businesses doing business within the state.

D. Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and State's Environment

The Commissioner has determined that this regulatory proposal may benefit the health and welfare of California residents by increasing protections for consumers who used income-based advances, education financing, debt settlement and student debt relief services, through the registration and oversight of providers and enforcement of the CCFPL's protections, and by limiting charges to consumers who obtain income-based advances. The regulatory proposal may protect consumers by encouraging registrants to invest more resources and attention to compliance with consumer financial protection laws. The Commissioner has not identified a benefit to worker safety or the state's environment.

TECHNICAL, THEORETICAL, or EMPIRICAL STUDIES (§ 11346.2, subd. (b)(3))

The DFPI relied upon the following reports or studies: the Financial Health Network’s report, “Earned Wage Access and Direct-to-Consumer Advance Usage Trends”;¹⁴ the DFPI’s Annual Report of Finance Lenders, Brokers and PACE Administrators Licensed under the CFL;¹⁵ the DFPI’s Annual Report of Payday Lending Activity Under the CDDTL;¹⁶ the DFPI’s “2021 Earned Wage Access Data Findings, March 2023”; and John Dunham and Associates, “2020 Economic Impact of the Debt Settlement Industry.”¹⁷ The DFPI also relied upon the following letters from the stakeholders submitted in response to an informal invitation for comment issued on February 4, 2021:¹⁸

1. ActiveHours, Inc. dba Earnin (Earnin), dated March 8, 2021.
2. American Fair Credit Council (AFCC), dated February 19, 2021.
3. American Financial Services Association, dated March 8, 2021.
4. Blockchain Advocacy Coalition, dated March 8, 2021.
5. California Creditors Bar Association (CalCBA), dated March 8, 2021.
6. California Financial Service Providers (CFSP), dated March 4, 2021.
7. California Low-Income Consumer Coalition (CLICC), dated March 15, 2021.
8. Campaign for California Borrowers’ Rights, dated March 8, 2021.
9. Center for Responsible Lending (CRL), National Consumer Law Center (NCLC), and Student Borrower Protection Center (SBPC), dated March 15, 2021.
10. Consumer Data Industry Association (CDIA), dated March 5, 2021.
11. The Consumer Federation of California, Center for Responsible Lending, Nextgen California, and 20 other organizations, dated March 8, 2021.
12. Consumer Relations Consortium, dated March 8, 2021.
13. Consumer Reports, dated March 2, 2021.
14. David Hutsell, dated February 8, 2021.
15. Electronic Transactions Association (ETA), dated March 7, 2021.
16. Encore Capital Group and Midland Credit Management, dated March 8, 2021.
17. FreeFrom, dated March 8, 2021.
18. Financial Health Network (undated).
19. First American DocuTech (undated).
20. Gurstel Law Firm P.C., dated March 5, 2021.
21. Innovative Lending Platform Association, dated March 8, 2021.
22. Legal Aid Foundation of Los Angeles, Housing and Economic Rights Advocates, Bay Area Legal Aid, and University of California at Irvine Consumer Law Clinic, dated March 8, 2021.
23. National Consumer Law Center (NCLC) and CRL, dated March 15, 2021.
24. MyPath, dated March 17, 2021.
25. Online Lenders Alliance, dated March 8, 2021.
26. Receivables Management Association International, dated March 8, 2021.

¹⁴ Available at <https://cfsi-innovation-files-2018.s3.amazonaws.com/wp-content/uploads/2021/04/26190749/EWA_D2C_Advance_sage_Trends_FINAL.pdf>.

¹⁵ Available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/10/2020-CFL-Aggregated-Annual-Report.pdf>>.

¹⁶ Available at <https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/07/DFPI_AnnualReport_CDDTL-2020.pdf> and <https://dfpi.ca.gov/wp-content/uploads/sites/337/2022/07/DFPI_AnnualReport_CDDTL-2021.pdf>.

¹⁷ Available at <<https://americanfaircreditcouncil.org/wp-content/uploads/Economic-Impact-Report-2020.pdf>>.

¹⁸ All comments available at <<https://dfpi.ca.gov/comments-on-proposed-rulemaking-pro-01-21-ccfpl/>>

27. Sustainable Economies Law Center, dated March 8, 2021.
28. Responsible Business Lending Coalition, CAMEO, CDC Small Business Finance, and 48 other organizations (undated).
29. Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Debt Collective, Berkeley Law Center for Consumer Law and Economic Justice, Public Law Center, CRL, and Consumer Federation of California (CFC)(undated).
30. Invest in Student Advancement Alliance (ISA Alliance) (undated).

The DFPI also relied upon the following letters from the stakeholders submitted in response to an informal invitation for comment issued on November 17, 2021:¹⁹

1. AFCC, dated December 20, 2021.
2. Branch Messenger, Inc. (Branch), dated December 20, 2021.
3. CFC, CAMEO, the SBPC, and 11 other organizations, dated December 20, 2021.
4. DailyPay, Inc. (DailyPay), dated December 20, 2021.
5. Earnin, dated December 20, 2021.
6. Eileen Newhall Consulting LLC (Newhall Consulting), dated December 15, 2021.
7. Electronic Transactions Association, dated December 17, 2021.
8. Even Responsible Finance, Inc. (Even), dated December 20, 2021.
9. Innovative Payments Association, dated December 17, 2021.
10. Instant Financial USA, Inc. (Instant Financial), dated December 20, 2021.
11. ISA Alliance (undated).
12. SBPC, CRL, CFC, and five other organizations, dated December 20, 2021.
13. MoneyLion Inc. (MoneyLion), dated December 23, 2021.
14. NCLC, CRL, and CFC, dated December 20, 2021.
15. Payactiv, Inc. (Payactiv), dated December 20, 2021.
16. Point Digital Finance, Inc., dated December 20, 2021.
17. SBPC and Berkeley Law Center for Consumer Law and Economic Justice, dated December 20, 2021.
18. University of California, dated December 20, 2021.

The documents are available and on file with the DFPI.

CONSIDERATION OF ALTERNATIVES (§ 11346.2, subd. (b)(4)(A).)

A. Reasonable Alternatives Generally (§ 11346.2, subd. (b)(4)(A))

During outreach to stakeholders in contemplation of this rulemaking, stakeholders requested various regulations related to the registration requirements proposed in this rulemaking. They also requested changes to some of the draft regulations made available to the public as part of the outreach. None of the changes or additions were “less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.”²⁰ However, in the paragraphs that follow, the DFPI responds to requested changes to

¹⁹ All comments available at <<https://dfpi.ca.gov/comments-on-pro-01-21-ccfpl-registration/>>

²⁰ Gov. Code, § 11346.2.

the extent practicable. The DFPI provides explanations relating to its decisions to facilitate further informed comments from stakeholders.

B. Other Alternatives Considered

Point Digital Finance, Inc., suggested in a comment that the DFPI require registration of home equity investment or shared appreciation products.²¹ The DFPI has not proposed registration of this industry in this rulemaking action but continues to study this growing industry. The DFPI requires additional time to learn more about common practices with respect to these products before deciding upon the appropriate regulatory approach to this industry.

Eileen Newhall Consulting LLC (Newhall Consulting) recommended that the DFPI incorporate by reference future revisions to NMLS forms referenced in the regulations.²² This change has merit, but it appears to be prohibited by California Code of Regulations, title 1, section 20, subdivision (c)(4).

Newhall Consulting recommended that the DFPI clarify the difference between the requirements of proposed section 1022, subdivision (a)(2)²³ and proposed section 1026.²⁴ Further clarification is not necessary in the regulation, because the two requirements serve different purposes. Documents may sometimes be responsive to both requirements, but this does not mean that the requirements are duplicative in all cases. When documents are responsive to both requirements, then an applicant may provide a single document and explain that it is responsive to multiple requirements. However, in some cases a consumer may be required to enroll in an income-based advance program through an application before they make an actual request for an income-based advance. In this case, documents responsive to proposed section 1022, subdivision (a)(2), will likely be different from documents responsive to proposed section 1026.

Newhall Consulting,²⁵ Earnin,²⁶ Branch,²⁷ and Instant Financial²⁸ requested that the DFPI only require reports about consumers' use patterns for income-based advances broken down by quarter and not by month.²⁹ Branch further requested that the DFPI limit reporting to cover only

²¹ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Point-Digital-Finance-12.20.21.pdf>>.

²² Letter dated December 15, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Eileen-Newhall-Consulting-LLC-12.15.21.pdf>>.

²³ Requiring a registration applicant to submit “[a]ny standard enrollment materials or applications the applicant provides to California residents in connection with the offer or sale of the subject product.”

²⁴ Requiring a registration applicant to submit “images documenting the process by which California residents request and repay income-based advances (as applicable), and any standard notifications provided to the California residents during the request and repayment process.”

²⁵ Letter dated December 15, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Eileen-Newhall-Consulting-LLC-12.15.21.pdf>>.

²⁶ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Earnin-12.20.21.pdf>>.

²⁷ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Branch-12.20.21.pdf>>.

²⁸ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Instant-Financial-USA-Inc.-12.20.21.pdf>>.

²⁹ Cite to the letters

the calendar year (with no data broken down by quarter or month).³⁰ The DFPI did not adopt these recommendations because the data required to maintain accurate records of advances made in a quarter (or a year) is the same data required to track the number of advances made in a month. If the DFPI required only quarterly or annual data, this would make it difficult to determine whether significant numbers of consumers are taking multiple advances each month and incurring significant charges in connection with frequent use.

The ETA recommended limiting reporting requirements for income-based advance providers.³¹ The DFPI did not adopt this change because the proposed reporting requirements for income-based advance providers consist of data that should be readily available to providers, the requirements are not duplicative, and the requirements serve important purposes further discussed below.

The ETA recommended giving registrants more than ten days to comply with a notice that an annual report is due and not filed, and to allow registrants more time to comply before a registration is revoked or other enforcement action is taken.³² The DFPI did not adopt these recommended changes because ten days provides adequate time for registrants to comply with an annual requirement that is the same every year. This requirement is also consistent with other laws the DFPI administers.³³ Finally, the DFPI did not adopt the recommended change to allow registrants more time to comply before a registration is revoked or other enforcement action taken because proposed section 1048 provides a simple, adequate remedy for former registrants who timely request rescission of a summary revocation order.

The ETA recommended revising section 1012, subdivision (a), to allow registrants to represent that their product has been approved by the Commissioner.³⁴ The DFPI did not adopt this recommendation because the registration process does not constitute a determination that the DFPI has approved an applicant's business model, and so such a representation by a registrant would be misleading.

The ETA recommended adding "if applicable" to the annual reporting requirements under section 1045.³⁵ The DFPI did not adopt the requested change because the proposed reporting requirements are sufficiently specific for a registrant to understand the data they are required to report. ETA said that many companies offer products unrelated to income-based advances and requiring them to report on unrelated products is overly burdensome. However, ETA did not articulate which annual reporting requirements would require reporting related to unrelated products or why such requirements would be burdensome.

³⁰ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Branch-12.20.21.pdf>>.

³¹ Letter dated December 17, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Electronic-Transactions-Association-12.17.21.pdf>>.

³² *Id.*

³³ See e.g. Fin. Code section 22715, subd. (a).

³⁴ Letter dated December 17, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Electronic-Transactions-Association-12.17.21.pdf>>.

³⁵ *Id.*

IPA requested clarification as to how the DFPI will protect information submitted by registrants from cyber attacks and data breaches.³⁶ The DFPI has custody of many types of sensitive, confidential data and already maintains extensive policies and procedures administered by its information technology team to protect sensitive data.

PayActiv requested that the DFPI limit the requirement that registrants report changes to their applications to “substantial material changes.”³⁷ Earnin,³⁸ Even³⁹ and DailyPay⁴⁰ made similar requests. The DFPI did not adopt this recommendation because the DFPI has changed the reporting requirement to report most changes only annually. Furthermore, requiring annual reporting of only “substantial material” changes would create a difficult standard for registrants to comply with and for the DFPI to enforce.

The AFCC asked the DFPI to collect data relating to debt settlement alternatives, such as credit counseling, bankruptcy, creditor loan modifications, and debt consolidation loans.⁴¹ The DFPI is not adopting this recommendation at this time because there are numerous alternatives to debt settlement and each has unique features that would require distinct reporting requirements. Rather than address these additional industries in this rulemaking, the DFPI will continue to monitor these markets and may propose additional regulations in the future.

A joint comment from the SBPC, CRL, CFC and five other organizations recommended that the DFPI collect data on the performance of education financing contracts from registrants.⁴² The DFPI did not adopt this recommendation because the DFPI can collect data on performance metrics for education financing from student loan servicers under the SLSA.

SBPC, CRL, CFC and five other organizations recommended that the DFPI collect data relating to the marketing strategies of education financing providers to assess how providers may target protected classes.⁴³ Fair lending is a priority for the DFPI. However, the DFPI did not adopt the recommendation because the DFPI can pursue fair lending matters through examinations of registrants.

SBPC, CRL, CFC and five other organizations recommended explicitly including Training Repayment Agreements (TRAs) in the definition of education financing.⁴⁴ The DFPI did not adopt this recommendation because TRAs may have unique features that would require distinct

³⁶ Letter dated December 17, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Innovative-Payments-Association-12.17.21.pdf>>.

³⁷ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Payactiv-12.19.21.pdf>>.

³⁸ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Earnin-12.20.21.pdf>>.

³⁹ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Even-Responsible-Finance-Inc-12.20.21.pdf>>.

⁴⁰ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/DailyPay-12.20.21.pdf>>.

⁴¹ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/American-Fair-Credit-Council-12.20.21.pdf>>.

⁴² Letter dated December, 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Joint-Comments-SBPC-CRL-CFC-CR-SDCC-NCLC-Nextgen-CA-YI-12.20.21.pdf>>.

⁴³ *Id.*

⁴⁴ *Id.*

reporting requirements. Rather than address these products in this rulemaking, the DFPI will continue to monitor the market for TRAs and may propose additional regulations in the future.

SBPC, CRL, CFC and five other organizations recommended that the DFPI make education financing contracts unlawfully offered without registration void and unenforceable, and to create regulatory penalties for failure to file an annual report.⁴⁵ The DFPI did not adopt these changes because the DFPI has extensive powers to make consumers whole (including through rescission of contracts) and to impose penalties for unlawful activities.⁴⁶

SBPC, CRL, CFC and five other organizations recommended revising section 1044, subdivision (c)(1), to require a provider to calculate the amount advanced based upon “the true price for the institution to offer the program on a per-student basis.”⁴⁷ The DFPI did not adopt this recommendation because this definition would be difficult for the DFPI to verify.

Earnin requested that the DFPI exempt free, non-recourse advances from the CFL.⁴⁸ Even made a similar request.⁴⁹ Based upon the reasoning set forth in connection with the proposed adoption of section 1461 under the Purpose and Necessity section below, the DFPI did not adopt this recommendation.

The ISA Alliance requested that the DFPI create a regulation defining income share agreements as something distinct from “income-based loan payments from income dependent loans.”⁵⁰ Based upon the reasoning set forth in connection with the proposed adoption of section 1461 under the Purpose and Necessity section below, the DFPI did not adopt this recommendation.

The ISA Alliance requested that the DFPI exempt from registration any education providers who are subject to oversight by other state agencies.⁵¹ The DFPI did not adopt this recommendation because it would be inappropriate for the DFPI to expand upon the limited exemptions for DFPI licensees and the licensees and registrants of other state agencies that the Legislature included in the Financial Code.⁵²

The ISA Alliance requested that the DFPI clarify whether proposed section 1021, subdivision (a)(15)(A), requires a description of products not offered directly to California residents.⁵³ The DFPI did not adopt the recommendation to provide the clarification because the DFPI does not believe that products or services that an applicant offers or provides would reasonably be

⁴⁵ *Id.*

⁴⁶ See Fin. Code § 90012.

⁴⁷ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Joint-Comments-SBPC-CRL-CFC-CR-SDCC-NCLC-Nextgen-CA-YI-12.20.21.pdf>>.

⁴⁸ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Earnin-12.20.21.pdf>>.

⁴⁹ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Even-Responsible-Finance-Inc-12.20.21.pdf>>.

⁵⁰ Undated letter available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/ISA-Alliance-12.20.21.pdf>>.

⁵¹ *Id.*

⁵² See Fin. Code § 90009, subd. (a)(2).

⁵³ Undated letter available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/ISA-Alliance-12.20.21.pdf>>.

interpreted to be products or services offered or provided to California residents, unless those products and services are in fact offered or provided to California residents.

The ISA Alliance requested clarification as to whether proposed section 1021, subdivision (a)(15)(B), requires applicants to report charges to institutional clients or consumer fees the servicer will allow an educational institution-client to charge students.⁵⁴ The DFPI did not adopt the recommendation for clarification because the definition of charge under the proposed regulations mirrors the definition in the CFL.⁵⁵ The DFPI has administered the CFL and its predecessor statutes for many years using that definition, and, based upon that experience, the DFPI believes the definition is adequate. Further details from the requestor, including examples of charges to institutional clients, could assist the DFPI in understanding this request.

DailyPay requested that the DFPI limit applicants' obligations to provide descriptions of products and services offered to California residents and a schedule of charges for those products and services.⁵⁶ DailyPay suggested that this requirement should cover only subject products and not other products and services offered to California residents. The DFPI did not adopt this recommendation because limiting the information reported would prevent the DFPI from understanding how subject products are offered and provided in the context of other product and service offerings and inhibit the DFPI's ability to assess whether a registrant's other offerings should be treated as subject products under the regulations.

DailyPay suggested that the DFPI implement an automatic approval process for registration applications.⁵⁷ The DFPI did not adopt this recommendation because automatic approvals could result in applicants operating in California after submitting facially deficient application materials and thereby limiting the information available to the DFPI for supervisory purposes.

DailyPay suggested that the DFPI eliminate the requirement that obligor-based advance providers report on whether they successfully collect advances on scheduled collection dates.⁵⁸ The DFPI did not adopt this recommendation. When an obligor-based advance cannot be collected on a consumer's payday, this may suggest that the provider has insufficient controls to limit amounts advanced to the amount earned by and due to the consumer.

CFC, Cameo, SBPC and 11 other organizations requested that the DFPI explicitly require debt settlement account payment processors to register with the DFPI.⁵⁹ Understanding the combined costs of a debt settlement service, including costs imposed by payment processors, is essential to understanding the risks and benefits of debt settlement services. For this reason, the DFPI is proposing in this rulemaking to require registered debt settlement service providers to report on charges paid to payment processors. However, the DFPI is not requiring payment processors to

⁵⁴ Undated letter available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/ISA-Alliance-12.20.21.pdf>>.

⁵⁵ See Fin. Code § 22200.

⁵⁶ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/DailyPay-12.20.21.pdf>>.

⁵⁷ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/DailyPay-12.20.21.pdf>>.

⁵⁸ *Id.*

⁵⁹ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Coalition-CFC-and-others-12.20.21.pdf>>.

register because the reporting requirement should be sufficient for the DFPI to assess the risks and benefits of debt settlement services that use payment processors.

CFC, Cameo, SBPC and 11 other organizations recommended various actions based upon whether the DFPI has determined that debt settlement service providers are proraters under Financial Code section 12002.1.⁶⁰ The DFPI did not adopt the recommendations because the legal determination the organizations requested is beyond the scope and purposes of this rulemaking.

CFC, Cameo, SBPC and 11 other organizations recommended various additional reporting requirements for registrants, some of which are already included in the proposed registration application requirements.⁶¹ The DFPI did not adopt the various additional metrics that the organizations requested because the data collected from registrants through the applications and annual reports will necessarily be limited, as it is for the DFPI's licensees, to ensure the reporting requirements are not unduly burdensome.

CFC, Cameo, SBPC and 11 other organizations requested that the DFPI collect transaction level data with respect to debt settlement companies (e.g., results with respect to debts enrolled).⁶² The DFPI did not adopt this recommendation because, while the DFPI often collects transaction-level data in examinations, it is uncommon for the DFPI to do so in the context of an annual report. Based upon experience and absent a compelling argument to deviate from the DFPI's practice under other laws, the DFPI believes aggregate data reporting should be sufficient to achieve the regulations' purposes.

CFC, Cameo, SBPC and 11 other organizations expressed concern about a provision from proposed section 1040 that would permit the Commissioner to allow former registrants to continue to operate "as may be permitted by order of the Commissioner."⁶³ The organizations said that this language could create the impression that there is an invisible and informal appeals process by which former registrants may reverse the considered work of DFPI staff by taking their case directly to the Commissioner. The organizations suggested that the DFPI describe the necessary procedures. The proposed provision is in multiple other laws the DFPI administers.⁶⁴ In light of this, further dialogue with stakeholders may be necessary to reach a considered decision as to whether outlining such a process by regulation is appropriate. Furthermore, given the breadth of this rulemaking, this recommendation may be more appropriate for a separate rulemaking.

Instant Financial requested that the DFPI eliminate the requirement that income-based advance providers report the average length of time between when advances are made and when they are repaid.⁶⁵ The DFPI did not adopt this recommendation because the length of time between when

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ See Fin. Code §§ 22107 (California Financing Law), 23016 (CDDTL), 28144 (SLSA), and 100020 (Debt Collection Licensing Act).

⁶⁵ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Instant-Financial-USA-Inc.-12.20.21.pdf>>.

an advance is made and when it is repaid is an important metric for the DFPI to understand the cost of income-based advances over time. The cost of credit over time can help the DFPI and others better understand how different credit products compare.

MoneyLion requested that the DFPI revise the definition of “obligor” with respect to when customers of an obligor are not considered obligors themselves.⁶⁶ MoneyLion’s requested change would have excluded a “service provider of an obligor” from the definition of obligor. The DFPI did not adopt MoneyLion’s requested change because the pertinent section was removed from the proposed regulations and MoneyLion did not provide reasoning for the requested change.

The NCLC, CRL, and CFC submitted a comment requesting additions to income-based advance reporting requirements, including copies of any advertising materials, a description of delivery channels for wage-based advances, financial data privacy information, a distribution of advance amounts as a percentage of a resident’s paycheck, reasons why advances are not repaid on the collection date, and the total number of people whose accounts were closed or had their maximum advance reduced during the repayment period.⁶⁷ While the DFPI incorporated some of NCLC’s other recommended changes with respect to data collection, the DFPI did not adopt the other changes because the data collected through the registration application and annual reporting is necessarily limited, as it is for DFPI licensees, to avoid reporting requirements that are unduly burdensome.

The NCLC, CRL, and CFC submitted a comment requesting that the DFPI establish penalties by regulation for companies that fail to register as required.⁶⁸ The DFPI did not adopt this recommended change because the CCFPL has robust penalties under Financial Code section 90012.

A coalition including the SBPC, CRL, CFC, and five other organizations requested that the DFPI make application and annual report information public, noting there should be a strong presumption in favor of public disclosure to allow the public to identify risks and ongoing harms in the market.⁶⁹ Similarly, NCLC, CRL and CFC requested in a separate comment that the DFPI make a number of items collected through registration accessible to the public for similar reasons.⁷⁰ Another letter from the CFC, CAMEO, SBPC and 11 other commenters made a similar request.⁷¹ The DFPI did not adopt this recommended change for the reasons set forth in Section 1041, subdivision (d), under the Purpose and Necessity section below.

⁶⁶ Letter dated December 23, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/MoneyLion-12.23.21.pdf>>.

⁶⁷ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/National-Consumer-Law-Center-12.20.21.pdf>>.

⁶⁸ *Id.*

⁶⁹ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Joint-Comments-SBPC-CRL-CFC-CR-SDCC-NCLC-Nextgen-CA-YI-12.20.21.pdf>>.

⁷⁰ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/National-Consumer-Law-Center-12.20.21.pdf>>.

⁷¹ Letter dated December 20, 2021, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Coalition-CFC-and-others-12.20.21.pdf>>.

C. Reasonable Alternatives Relating to Small Businesses (§ 11346.2, subd. (b)(4)(B))

No reasonable alternative considered by the DFPI or that has otherwise been identified and brought to the attention of the DFPI would be as effective and less burdensome, or would lessen any adverse impact on small businesses.

ECONOMIC IMPACT ON BUSINESS (§ 11346.2, subd. (b)(5))

The DFPI has initially determined that this proposed regulation will not have a significant adverse economic impact on business. In making this determination, the DFPI relied on comment letters from interested parties during preliminary rulemaking activities and past experience with similar requirements under other laws that DFPI administers.⁷²

PURPOSE AND NECESSITY OF EACH REGULATION (§ 11346.2, subd. (b)(1))

Subchapter 4. California Consumer Financial Protection Law

Article 1. Registration.

Section 1000. General Definitions.

Section 1000, subdivision (a), defines “applicant” to mean any person who applies for registration under the CCFPL. The purpose of subdivision (a) is to clarify who is an applicant because the proposed regulations provide different requirements depending on whether the person is an applicant or a registrant. The proposed definition is necessary to ensure that persons who are applying for a registration understand which requirements apply to them.

Section 1000, subdivision (b), defines “branch office” to mean a location of the applicant other than the applicant’s principal place of business identified in a registration application or an amended application where the applicant offers or provides financial products or services to California residents. The purpose of subdivision (b) is to distinguish branch offices from principal places of business. The proposed definition is necessary to ensure that applicants understand that they must provide in the application information on their principal place of business and not a branch office.

⁷² See Letter to the DFPI from the Student Borrower Protection Center and Others (December 20, 2021), p. 10, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Joint-Comments-SBPC-CRL-CFC-CR-SDCC-NCLC-Nextgen-CA-YI-12.20.21.pdf>> (“The DFPI’s draft regulations would impose minimal costs on industry and minimal disruption in the business or jobs landscape while creating a positive tailwind for both competition and business success in California by boosting investment, and incentivizing innovation.”); Letter to the DFPI from the National Consumer Law Center and Others (December 20, 2021), p. 11, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/National-Consumer-Law-Center-12.20.21.pdf>> (“The economic impact of proposed application requirements...can be collected during the regular course of business, is commensurate with supervision needs.”)

Section 1000, subdivision (c), defines “California resident” using the definition used in California Revenue and Taxation Code section 17014, subdivision (a), and allows income-based advance providers to treat consumers as California residents if they have a California work address and the provider does not have the consumer’s residential address. The registration and reporting requirements in the proposed regulations apply to persons who are engaged in the business of offering and providing financial products or services to California residents. This section’s purpose is to provide clarity to applicants and registrants with respect to who is a California resident for purposes of these requirements and clarify that income-based advance providers are not required to collect residential address information from consumers or require consumers to provide that information. The proposed definition is necessary because “California resident” is not defined by the CCFPL, it reduces regulatory burdens, and provides regulatory flexibility to income-based advance providers.

Section 1000, subdivision (d), defines “Commissioner” to mean the Commissioner of Financial Protection and Innovation. The purpose of subdivision (d) is to identify the California regulator responsible for implementing the CCFPL and overseeing the registrants. The proposed definition is necessary because some applicants and registrants may be unfamiliar with California regulatory governance, particularly those located outside of California.

Section 1000, subdivision (e), defines “control” to mean any person with the power to direct or cause the direction of the management and policies of a person. The purpose of subdivision (e) is to provide clarity as to the meaning of the term “control” as used in sections 1000, subdivision (h) and 1021, subdivision (a)(13), which require applicants to identify certain persons who meet minimum ownership thresholds and who also control the applicant. The proposed definition is necessary to ensure that applicants understand which persons that hold ownership interests in the applicant must be reported in the application.

Section 1000, subdivision (f), defines “credit” using the same definition in Financial Code section 90005, subdivision (g), and explicitly incorporates, without limitation, obligations where related debt includes an obligation to pay money, regardless of whether the obligation is absolute or contingent, or fixed or variable. The proposed definition incorporates language from the definition of “debt” in Financial Code section 90005, subdivision (f). The purpose of subdivision (f) is not to modify the “credit” definition as set out in statute, but rather to clarify for credit providers who require consumers to execute contingent or variable obligations (e.g., some companies operating in the earned wage access and income share agreement industries) that they are providing “credit” and are subject to the proposed regulations. The proposed definition is necessary to clarify for providers of financial services or products when their activities fall within the scope of the regulations.

Section 1000, subdivisions (g) and (h), define the NMLS “Form MU1” and “Form MU2” to mean, respectively, the form used to provide information on the company (or sole proprietor) and the form used to provide information on individuals who own or control the company. The purpose of the subdivisions is to identify the forms applicants must use to apply for and maintain a registration under the CCFPL. The proposed definitions are necessary to help applicants understand the forms they must complete and file with NMLS to obtain a registration.

Section 1000, subdivision (i), defines “individual” to mean a natural person. The purpose of subdivision (i) is to clarify who is an individual for purposes of completing the Form MU2. The proposed definition is necessary to help applicants understand the application form filing requirements.

Section 1000, subdivision (j), defines “registrant” to mean any person who is registered under the California Consumer Financial Protection Law. The purpose of subdivision (j) is to clarify who is a registrant for purposes of the regulatory requirements. The proposed definition is necessary to ensure that registrants understand the requirements for maintaining a registration, including filing annual reports and paying annual assessment fees.

Section 1000, subdivision (k), defines “subject product” to mean a financial service or product that is subject to the registration requirements in the proposed regulations. The purpose of subdivision (k)(1) through (4) is to identify the four subject products: debt settlement services, student debt relief services, education financing, and income-based advances. While many different financial services and products are being offered and provided to California consumers, the DFPI proposes to require registration and reporting for providers of the four products and service identified in subdivision (k)(1) through (4). The proposed definition is necessary to identify who must register under the CCFPL.

Section 1000, subdivision (l), defines “NMLS” to mean the Nationwide Multistate Licensing System & Registry. The purpose of subdivision (l) is to clarify that “NMLS” refers to the entity authorized by the DFPI to collect and maintain records and process fees related to registrants. The proposed definition is necessary because applicants will be required to apply for registration and maintain their registration through NMLS.

Section 1000, subdivision (m), defines “principal officers” as including individuals performing the functions of certain executive level positions, and any other officer “primarily responsible” for the conduct of the applicant’s activities with respect to subject products in California. The purpose of subdivision (m) is to identify the principal officers who must be included on the Form MU1 pursuant to proposed section 1021, subdivision (a)(13)(A). The language, “the officer primarily responsible for the conduct of the applicant’s activities with respect to subject products,” is intended to capture individuals who are responsible for running the business and the regulated activities under a title not already included in the other categories specified in subdivision (m). Whether any other officer will need to be identified in the registration application as “primarily responsible” will depend on each applicant’s unique business structure. The category, however, is not intended to require applicants to report every professional who interacts with California consumers. The DFPI’s regulatory interest is in the individuals who are responsible for overseeing the business, regulated activities, or major control functions of the business, which typically include the principal officers. Identifying these officers and obtaining information about them is necessary for the DFPI to effectively administer examinations (e.g., directing examination-related questions to the appropriate officers), to assess risks associated with an applicant’s business in California (e.g., identifying officers who may have overseen unlawful conduct in the past), and to ascertain the identity of the individuals controlling the applicants.

Section 1001. Definitions – Debt Settlement Services.

Section 1001, subdivision (a), defines “charges” for debt settlement services as including amounts contracted for or received in connection with debt settlement services and amounts contracted for or received by payment processors in connection with a person’s provision of debt settlement services. The purpose of this definition is to ensure clarity and consistency among debt settlement service providers when reporting the total charges collected from California residents under section 1042. The proposed definition is necessary because without this definition, debt service providers may not understand the information that must be reported to the DFPI and may report charges differently, which will result in less reliable and comparable annual reports from registrants.

Section 1001, subdivision (b)(1) and (2), defines “debt settlement services” by identifying the activities that qualify as debt settlement. Debt settlement services include providing advice or offering to act or acting as an intermediary in debt reduction negotiations or debt relief services to obtain a settlement or reduction associated with a consumer’s debt, or advising or assisting a consumer to accumulate funds in an account for future payment of a reduced amount of debt. These activities are similar to the definition of “debt settlement services” under the recently adopted Fair Debt Settlement Practices Act (FDSA).⁷³ The purpose of subdivisions (b)(1) and (b)(2) is to clarify the activities that constitute debt settlement services to enable persons to determine whether they must register with the DFPI. Using a similar definition to the FDSA will also ensure consistency with existing debt settlement law. The definition of debt settlement services in subdivision (b)(1) differs from the FDSA’s definition by including services in which the purpose is “a reduction in the interest rate or payment amount associated with a consumer’s debts.” This provision is necessary to ensure that all companies that hold themselves out to consumers as providing services to eliminate the consumer’s debts or make the consumer’s debts more manageable are subject to registration. Subdivisions (b)(1) and (b)(2) are necessary to enable persons to determine whether they must register with the DFPI.

Section 1001, subdivisions (c) and (d), define “payment processor” to mean a person who provides payment processing services and “payment processing services” to mean accepting or facilitating the acceptance, holding, or distributing of funds on behalf of a consumer for debt settlement. The purpose of the definitions is to clarify the reporting requirements in proposed section 1042, which requires registrants to report the charges collected from consumers. The proposed definitions are necessary to ensure that registrants understand the information that must be reported as charges and that the information being reported to the DFPI in the annual reports by all registrants is complete, reliable, and comparable.

Section 1002. Definitions – Student Debt Relief Services.

Section 1002, subdivision (a), defines “charges” as all amounts received by a registrant for providing student debt relief services to a consumer. The purpose of subdivision (a) is to specify what constitutes charges for purposes of reporting charges in the annual reports to the DFPI. The proposed subdivision is necessary to ensure that registrants understand the information that must be reported as charges and that the information being reported to the DFPI by all registrants is complete, reliable, and comparable.

⁷³ See Civ. Code, § 1788.301.

Subdivision (b) defines “student debt” as any debt arising from education financing. The purpose of subdivision (b) is to clarify what constitutes student debt for purposes of registration. The proposed subdivision is necessary to enable persons to determine whether they are required to register with the DFPI.

Subdivision (c)(1) and (2) defines “student debt relief services” in paragraph (1) as debt settlement services where the underlying debt is student debt or the following acts in paragraph (2) to secure a revised repayment plan or forgiveness for student debt: (A) assessing suitability or providing advice, (B) preparing documents on the consumer’s behalf, or (C) acting as an intermediary between a consumer and servicer of the consumer’s student debt. The purpose of subdivision (c) is to clarify the activities that constitute student debt relief services. The proposed subdivision is necessary to enable persons to determine whether they are required to register with the DFPI.

Section 1003. Definitions – Education Financing.

Section 1003, subdivision (a), defines “charges” as any interest, fees, bonuses, commissions, gratuities, brokerage, discounts, expenses, and other costs received by the registrant. The purpose of subdivision (a) is to clarify what constitutes charges for purposes of reporting charges in annual reports. The proposed subdivision is necessary to ensure that registrants understand the information that must be reported as charges and that the information being reported to the DFPI in the annual reports by all registrants is complete, reliable, and comparable.

Section 1003, subdivision (b), defines “education financing” as credit extended to fund postsecondary education. The purpose of subdivision (b) is to clarify what constitutes education financing for purposes of registration under the CCFPL. The proposed subdivision is necessary to enable persons to determine whether they must register with the DFPI.

Section 1003, subdivision (c), defines “gratuity” as an optional payment made by a consumer that does not affect the services provided by the registrant. The purpose of subdivision (c) is to clarify what constitutes a gratuity for purposes of reporting charges in the annual reports because charges include gratuities. The proposed subdivision is necessary to ensure that registrants are reporting all charges and that the information being reported to the DFPI in the annual reports by all registrants is complete, reliable and comparable.

Section 1003, subdivision (d), defines “income-based repayment” to mean an education financing payment obligation based on the consumer’s income or employment status. The purpose of the definition is to clarify what constitutes income-based repayment for purposes of reporting the information to the DFPI. The proposed definition is necessary to ensure that registrants understand their reporting obligations under the regulations with respect to education financing contracts where a recipient’s payment obligation varies based upon a recipient’s income or employment status and that the information being reported to the DFPI by all registrants in the annual reports is reliable, complete, and comparable.

Section 1003, subdivision (e), defines “maximum amount due” to mean the maximum amount the consumer may be required to pay under a contract with income-based repayment provisions,

excluding charges related to default. The purpose of subdivision (e) is to clarify the term because registrants will be required to report this information to the DFPI in their annual reports. The proposed definition is necessary to ensure that registrants understand the amount to be reported as the maximum amount due for education financing contracts with income-based payment provisions and that the information being reported to the DFPI by all registrants in the annual reports is complete, reliable, and comparable.

Section 1003, subdivision (f), defines “postsecondary education” to mean an educational program for students who have completed or terminated their secondary education or are beyond the compulsory age of secondary education and **subdivision (g)** defines “postsecondary institution” as any person that provides postsecondary education to California residents. The purpose of the definitions is to clarify the meaning of these terms for purposes of registration under the CCFPL. The proposed definitions are necessary to ensure that providers of education financing for programs that primarily serve post-secondary students and non-degree and non-certificate programs understand that they are required to register with the DFPI.

The “postsecondary education” definition is similar to the definition found in California Education Code section 94857; however, the Education Code limits its definition to “formal” educational programs. The DFPI removed the word “formal” because the term introduces ambiguity to the definition, and could create an incentive for institutions to attempt to evade registration requirements by marketing their products as less formal versions of traditional educational programs.

The proposed definition also departs from definition in the Education Code by including educational programs that primarily serve students who have completed or terminated their secondary education or are beyond the compulsory age of secondary education. The Education Code only covers programs whose instruction “is designed for” such students. The DFPI added the provision because, in some cases, it may be difficult to establish for whom a program is designed. This provision provides clarity by explaining that if a program primarily serves post-secondary students, then providers of education financing associated with those programs will be required to register.

Last, the proposed definition departs from definition in the Education Code by clarifying that “[p]ostsecondary education is not limited to programs where a student receives a degree or certificate upon completion of the program.” Although the Education Code’s definition is not limited to programs where a student receives a degree or certificate, the DFPI added the additional provision to provide clarity to providers and ensure that providers of education financing for non-degree and non-certificate programs understand that they are required to register.

Section 1004. Definitions – Income-Based Advances.

Section 1004, subdivision (a), defines “amount due” as the amount to be paid by the consumer of an income-based advance on the collection date. The purpose of subdivision (a) is to clarify the meaning of amount due for purposes of reporting the information to the DFPI. The proposed subdivision is necessary to ensure that registrants understand their reporting obligations under

the regulations and that the information being reported to the DFPI in the annual reports by all registrants is complete, reliable, and comparable.

Section 1004, subdivision (b), defines “account transfer fee” to mean a fee to move an income-based advance from an account designated or required by the provider to the consumer’s account. The purpose of this definition is to clarify the meaning of an account transfer fee for purposes of reporting the information to the DFPI. This definition is necessary to ensure that registrants understand their reporting obligations under the regulations and that the information being reported to the DFPI in the annual reports by all registrants is complete, reliable, and comparable.

Section 1004, subdivision (c), defines “charges” as interest, fees, bonuses, commissions, account transfer fees, gratuities, and other forms of costs. The proposed regulations require registrants to report all charges. The purpose of this definition is to clarify that charges include more than the charges associated with the advance and include charges that are not directly associated with an advance such as subscription fees and account transfer fees, and charges for optional services or services that are not a condition for receiving an advance such as expedited fund fees and gratuities. The proposed definition is necessary to ensure that registrants understand their reporting obligations under the regulations and that the information being reported to the DFPI by all registrants in the annual reports is complete, reliable, and comparable.

Section 1004, subdivision (d), defines “collection date” as the date a provider plans to collect previous unpaid income-based advances made during the period. The purpose of this definition is to clarify the meaning of collection date for purposes of reporting information to the DFPI. This definition is necessary to ensure that registrants understand their reporting obligations under the regulations and that the information being reported to the DFPI in the annual reports by all registrants is complete, reliable, and comparable.

Section 1004, subdivision (e), defines “expedited funds fee” to mean any amount paid by a consumer to accelerate the receipt of an income-based advance. The purpose of this definition is to clarify the meaning of expedited funds fee for purposes of reporting information to the DFPI. This definition is necessary so that registrants understand their reporting obligations under the regulations and properly report fees associated with accelerating the speed with which an income-based advance is delivered, and that the information being reported to the DFPI in the annual reports by all registrants is complete, reliable, and comparable.

Section 1004, subdivision (f), defines “gratuity” as an optional payment made by a consumer in connection with an income-based advance to a consumer that does not affect the services provided to the consumer. The purpose of this definition is to clarify the meaning of gratuity for purposes of reporting information on charges to the DFPI. This definition is necessary to ensure that registrants understand their reporting obligations under the regulations and properly report optional payments made by consumers in connection with income-based advances, and that the information being reported to the DFPI in the annual reports by all registrants is complete, reliable, and comparable.

Section 1004, subdivision (g)(1) through (3), defines “income-based advance” to mean an advance made to a consumer by a provider and that has the characteristics specified in paragraphs (1) through (3). The purpose of this definition is to clarify the meaning of an income-based advance for purposes of the registration and reporting requirements under the CCFPL and the requirements under the CFL in these proposed regulations.⁷⁴ This definition is necessary to enable businesses to determine whether they must register under the CCFPL or are subject to the CFL under proposed section 1462.

Section 1004, subdivision (g)(1), provides that income-based advances that are subject to registration are advances “based on income that has accrued to the benefit of the consumer, but has not, at the time of the advance, been paid to the consumer.” The purpose of this subdivision is to describe one aspect of the emerging income-based advance industry. That is, providers in the industry typically structure their advance such that it is limited to income that has already accrued to the benefit of the consumer. This definition is necessary to accurately reflect industry practices. The proposed rule would require the income to have in fact accrued to the benefit of the consumer and not where the provider has “reasonably” determined the income that has accrued to the benefit of the consumer. While a reasonableness standard may be appropriate in other contexts, imposing such a standard here could operate to limit reporting obligations for income-based advance providers whose assessments of consumers’ accrued income are less accurate.

Section 1004, subdivision (g)(2), provides that income-based advances that are subject to registration are advances where the advance is scheduled for collection in a single payment on a date within 31 days, and that date corresponds to the date the provider anticipates the accrued income described in subdivision (g)(1) will be paid to the consumer. The purpose of this subdivision is to specify which income-based advances are subject to the registration requirements. Income-based advance providers typically schedule a consumer’s repayment date to coincide with the consumer’s payday or regular direct deposit of other accrued income, and terms do not exceed the length of a pay cycle (31 days at its longest). This subdivision is necessary to avoid too broadly defining income-based advances to include products that fall outside the DFPI’s target industry.

Section 1004, subdivision (g)(3) (A) and (B), provides that income-based advances that are subject to registration are products where the provider has limited remedies against the consumer if the provider is not repaid the amount advanced. This language mirrors language used in 12 Code of Federal Regulations part 1041.3(d)(8). The purpose of this subdivision is to limit the reporting of income-based advances by CDDTL licensees in their annual reports under proposed Section 2030.5 to income-based advances that meet the characteristics in paragraphs (A) and (B). Although nothing in the CDDTL explicitly limits its applicability to transactions where a provider reserves the right to pursue legal remedies or debt collection activities, in the DFPI’s experience, most payday lenders licensed under the CDDTL do not contractually limit their collection activities in ways that the emerging income-based advance industry does. To ensure that the data the DFPI receives from its CDDTL licensees under section 2030.5 reports on products in the emerging income-based advance industry, it is necessary for the DFPI to specify these distinguishing characteristics in the definition of “income-based advance.”

⁷⁴ Proposed section 1462.

Section 1004, subdivision (h)(1) and (2), defines “obligor” to mean a consumer’s employer or a person who is not an employer, but who is contractually obligated to pay a consumer for work provided by the consumer to the person. The purpose of this subdivision is to clarify the meaning of obligor for purposes of reporting information under the CCFPL and complying with proposed requirements under the CFL. This subdivision is necessary to ensure registrants understand their reporting obligations under the regulations and that the information being reported to the DFPI in the annual reports by all registrants is complete, reliable, and comparable.

Section 1004, subdivision (i), defines “obligor-based advance” to mean any income-based advance where the provider intends to collect the amounts that have accrued to the consumer directly from the consumer’s obligor on the collection date. The purpose of this definition is to clarify the meaning of obligor-based advance for purposes of reporting information to the DFPI. This definition is necessary to ensure that registrants understand their reporting obligations under the regulations and that the information being reported to the DFPI in the annual reports by all registrants is complete, reliable, and comparable.

Section 1004, subdivision (j), defines “provider” to mean a person other than an obligor who engages in the business of providing income-based advances. The purpose of this definition is to clarify the meaning of provider for purposes of reporting information to the DFPI. This definition is necessary to ensure that registrants understand their reporting obligations under the regulations and that the information being reported to the DFPI in the annual reports by all registrants is complete, reliable, and comparable.

Section 1004, subdivision (k), defines “subscription fee” to mean any periodic fee paid by a consumer that includes any rights to receive an income-based advance. The purpose of this definition is to clarify the meaning of subscription fee for purposes of reporting information to the DFPI. This definition is necessary to ensure that registrants understand their reporting obligations under the regulations and properly report subscription fees paid by consumers and that the information being reported to the DFPI in the annual reports by all registrants is complete, reliable, and comparable.

Section 1010. Persons Required to Register.

Section 1010, subdivision (a), requires persons engaged in the business of offering or providing subject products to California residents to register with the Commissioner. Subject products are defined in proposed section 1000 to include debt settlement services, student debt relief services, education financing, and income-based advances. The purpose of subdivision (a) is to clarify that providers of these services must first register with the DFPI to offer or provide these products and services. The proposed subdivision is necessary to enable the DFPI to better protect consumers, detect risks, and report on financial services markets. Through examinations of providers, the DFPI can ensure that providers are complying with consumer financial protection laws and gather data about any risks that products present to consumers. Through annual reporting for registrants, the DFPI will be able to identify potential risks to consumers and report on target markets to inform policymaking. As discussed above, the four industries were chosen in part because they serve economically vulnerable populations.

The DFPI identified debt settlement for registration for a variety of reasons, including concerns raised by consumer advocates relating to the growth of these industries as California’s economy recovers from COVID⁷⁵ and allegations of past abuses in the debt settlement industry.⁷⁶ In addition, the trade association representing the debt settlement industry, the American Fair Credit Council, urged the DFPI to require registration of debt settlement providers to establish a regulatory framework for the industry.⁷⁷ The DFPI identified student debt relief companies for registration because the DFPI is required to promulgate registration regulations for student debt relief services under Financial Code section 90009.5, subdivision (a). The DFPI has already taken at least two actions against providers in that industry, thereby triggering the statutory requirement to create a registration program under the CCFPL.⁷⁸ The DFPI identified income-based advance providers for registration, because these providers represent a rapidly growing industry that touches many consumers,⁷⁹ and consumer advocates have raised various consumer protection concerns about the industry.⁸⁰ The DFPI identified education financing providers for registration, because legal services providers and consumer advocates have raised concerns about emerging education financing models,⁸¹ and those models have been the subject of recent DFPI enforcement actions.⁸²

⁷⁵ See Letter from Gail Hillebrand, Antonio Carrejo (Consumer Reports) (March 2, 2021), at 3-4, available at <https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/03/3-2-21-Antonio-Carrejo-Consumer-Reports-CR_DFPI_PRO0121.pdf> (“The first proposed registration priority factor of COVID recovery impact supports early registration for providers of financial products including ... debt relief or debt settlement... that pose an increased risk to consumers during the pandemic.”)

⁷⁶ See Letter from Ted Mermin (California Low Income Consumer Coalition) (March 15, 2021), at 4, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/03/3-15-21-Ted-Mermin-Comment-of-CLICC-on-CFPL-DFPI-March-2021-filed.pdf>> (“One client of CLICC member the Public Law Center in Orange County, a woman in her 80s, paid hundreds of dollars to a debt settlement company over the course of six months. Nothing was done to contact her creditors, and she was ultimately sued on one of the debts. Still nothing was done by the debt settlement company, and it refused to provide a refund.”)

⁷⁷ Letter from Denise Dunckel (American Fair Credit Counsel) (February 19, 2020), at 3, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/03/2-19-21-Steven-Boms-AFCC-comment-to-DFPI-with-enclosure.pdf>> (“Debt relief service providers should be required to register with DFPI under a regulation, examination and enforcement framework.”)

⁷⁸ See Consent Order, *Commissioner vs. Amerifed Doc Prep LLC* (August 9, 2021), available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/08/Amerifed-Doc-Prep-LLC-Consent-Order.pdf>>; Desist and Refrain Order and Citation, *Commissioner vs. Optima Advocates* (February 3, 2021), available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/02/D-R-and-Citation-Optima-Advocates-Inc.pdf>>.

⁷⁹ See Devina Khanna and Andrew Dunn (Financial Health Network), *Earned Wage Access and Direct-to-Consumer Usage Trends* (April 2021) p. 4, available at <https://cfsi-innovation-files-2018.s3.amazonaws.com/wp-content/uploads/2021/04/26190749/EWA_D2C_Advance_sage_Trends_FINAL.pdf>.

⁸⁰ See March 15, 2021 Letter from Lauren Saunders and Marisabel Torres (National Consumer Law Center and Center for Responsible Lending), available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/03/3-15-21-Lauren-Saunders-National-Consumer-Law-Center-DFPI-EWA-comments-FINAL-NCLC-CRL.pdf>>; March 8, 2021 Coalition Letter, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/03/3-9-21-Robert-Herrell-2-Consumer-Federation-of-California-DFPI-Coalition-comment-letter-FINAL-3.9.21.pdf>>.

⁸¹ See March 8, 2021 Letter from Legal Services Providers, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/03/3-8-21-Legal-Aid-Foundation-DFPI-Comments-LAFLA-BayLegal-HERA-CLC.pdf>>; March 8, 2021 Letter from a Campaign for California Borrower’s Rights, available at <https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/03/3-8-21-Samantha-Seng-DFPI-Comment_CA-Campaign-for-Borrowers-Rights.pdf>.

⁸² See Consent Order, *Commissioner vs. Lambda Inc.* (April 26, 2021), available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/04/CFPL-Lambda-School-consent-order.pdf>>; See Consent Order, *Meratas Inc.* (April 5, 2021), available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/08/Meratas-Consent-Order.pdf>>.

The DFPI has authority to require registration of debt settlement and student debt relief providers because these products constitute financial products or services under Financial Code section 90005, subdivision (k)(8). Subdivision (k)(8) generally covers financial advisory services other than those provided by a person regulated by the Securities Exchange Commission or a state securities commission, including credit counselors and providers of services to assist a consumer with debt management, debt settlement, or modifying the terms of an extension of credit.

The DFPI has the authority to require registration of persons offering or providing education financing because education financing is a financial product or service under Financial Code section 90005, subdivision (k)(1), which covers “extending credit.” The rules define “education financing” in section 1003, subdivision (b), to include “credit” extended for the purpose of obtaining a postsecondary education. Financial Code section 90005’s credit definition incorporates the concept of debt, which subdivision (h) of that section defines as “any obligation of a person to pay another person money regardless of whether the obligation is absolute or contingent... [or] fixed...” For this reason, the definition of education financing covers financing contracts commonly referred to as income share agreements, which can include contingent or unfixed obligations (based upon a consumer’s future income) to repay. (*Id.*) Despite the contingent or unfixed payment obligations under income share agreements, the contracts nonetheless require a consumer to incur a deferred obligation to pay another person money. (Fin. Code, § 90005, subs. (g) & (h).) The definition of education financing also covers retail installment contracts because those transactions involve “the right granted by a person to another person to...purchase property or services and defer payment for those purchases.” (Fin. Code, § 90005, subd. (g).)

The DFPI has the authority to require income-based advance providers to register, because an income-based advance is credit under Financial Code section 90005, subdivision (g). The regulations define an “income-based advance” in proposed section 1004, subdivision (g)(2), to include advances “scheduled for collection in a single payment on a date within 31 days.” This meets the definition of “credit” under Financial Code section 90005, subdivision (g), because consumers receive money today in exchange for agreeing to an arrangement in which the advance provider is repaid in the future. It is immaterial whether the advance provider includes in its contract limitations on its ability to collect, or the ability of the consumer to cancel collection entirely, because such arrangements still involve an agreement in which the consumer receives money that they agree to repay in the future. (*Id.*) Such deviations from many traditional credit relationships do not result in transactions falling outside the scope of the CCFPL’s credit definition, because that definition includes any obligation, regardless of whether it is absolute, contingent, or fixed. (Fin. Code, § 90005, subs. (g) & (h).) As a result, the definition of credit covers providers in the earned wage access and income-advance industry, who often limit their recourse if they are unable to collect and who sometimes allow consumers to cancel collection entirely. Industry data shows that, as a practical matter, these transactions involve advances that are repaid from the consumer funds 97 percent of the time. (See Financial Health Network “Earned Wage Access and Direct-to-Consumer Advance Usage Trends,” at p. 2 (April 2021) (finding that advances “were recouped successfully at least 97% of the time”).) These successful collection rates significantly exceed the rates of the DFPI’s CFL and CDDTL licensees, who

offer credit under those laws.⁸³ Furthermore, such income-based advance models would be unsustainable if the majority of consumers did not repay providers, and providers employ language in advertising and consumer communications that reflects this reality.⁸⁴ In light of these considerations, to consider earned wage access companies to be offering a product that is not credit would elevate form over substance.

Section 1010, subdivision (b)(1), exempts from registration licensed proraters, and certain non-profits that are exempt from licensure requirements for proraters. The purpose of subdivision (b)(1) is to avoid duplicative regulation of entities who are already subject to an existing licensure regime, and to avoid imposing regulatory requirements on certain non-profits that the Legislature has already determined should not be subject to the requirements for proraters. The proposed subdivision is necessary to achieve these goals, because absent this explicit exemption, licensed proraters and nonprofits exempt from prorater licensure might be uncertain whether they are also required to be registered under the DFPI's regulations.

Section 1010, subdivision (b)(2), exempts certain public postsecondary institutions based in California from registration when offering education financing for the purpose of obtaining postsecondary education at those institutions. A commenter representing the University of California requested an exemption for their institution because the university sometimes offers education financing to students and registration could draw resources away from support the university provides for students.⁸⁵ The concerns articulated by commenters relating to education financing did not identify public postsecondary institutions based in California or institutions accredited by the Western Association of Schools and Colleges as sources of concern.⁸⁶ The purpose of subdivision (b)(2) is to clarify that these institutions are exempt from registration. The proposed subdivision is necessary because requiring registration would not further consumer protection and may have unintended adverse consequences for these institutions.

Section 1010, subdivisions (b)(3), (4), and (5), exempts from registration DFPI licensees under the CFL, CDDTL, and SLSA that meet the requirements set forth in sections 1430.1, 2030.5, and 2044.1 of these regulations. The purpose of subdivision (b)(3), (4), and (5) is to clarify that these licensees are exempt from registration when offering subject products under their licenses. The proposed rules are necessary to avoid duplicative regulation of entities who are already subject to

⁸³ See Annual Report of Finance Lenders, Brokers and PACE Administrators Licensed under the California Financing Law, pp. 33-34, *available at* <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/10/2020-CFL-Aggregated-Annual-Report.pdf>>; Annual Report of Payday Lending Activity Under the California Deferred Deposit Transaction Law, p.8, *available at* <https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/07/DFPI_AnnualReport_CDDTL-2020.pdf>

⁸⁴ See e.g. <https://dave.com/> (visited May 18, 2022) (“Need help covering a bill? Get a small advance on your next paycheck and then pay Dave back when it arrives.”); <https://earnin.com/products/cash-out> (visited May 18, 2022) (“Earnin works with your existing bank account—so we can quickly and easily send you funds via direct deposit. We’ll then automatically deduct any Cash Out amounts or tips once payday hits.”); <https://www.hellobrigit.com/> (visited May 18, 2022) (“Get up to \$250 instantly. Tap to get an advance within seconds... Pay it back without hidden fees or “tips.”); <https://www.payactiv.com/get-started/> (visited May 18, 2022) (“On payday, the wages you accessed show as deductions on your paycheck.”).

⁸⁵ <https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/University-of-California-12.20.21.pdf>

⁸⁶ <https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/Joint-Comments-SBPC-CRL-CFC-CR-SDCC-NCLC-Nextgen-CA-YI-12.20.21.pdf>; <https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/12/SBPC-and-UC-Berkely-12.20.21.pdf>

an existing licensure regime. The rationale for these exemptions is further set forth below in Sections 1430.1, 2030.5, and 2044.1.

Section 1010, subdivision (c), provides that applicants for registration can continue to operate before their registration has been approved if they file the registration application and pay required registration fees before the effective date of the regulations. The purpose of this subdivision is to promote efficiency for the DFPI and to prevent interruptions in products and services already available to California consumers. The DFPI anticipates many initial applicants for registration, and it may take some time for DFPI staff to process these applications. This subdivision is necessary to ensure that the DFPI has sufficient time to review initial applications without preventing applicants from offering their products and services to California residents.

Section 1011. Effect of Registration.

Section 1011, subdivision (a), provides that the Commissioner's determination that persons engaged in the business of offering a subject product must register does not constitute a determination that other laws do not apply to those persons. The DFPI administers other financial services laws and some persons may be subject to the CCFPL as well as one or more of these other laws. The purpose of subdivision (a) is to clarify that other laws may also apply to the person. For example, the proposed regulations require earned wage access providers and income share agreement providers to register (unless offering their services under other DFPI licenses). Companies in these markets could misread the DFPI's registration regime as an implied determination that other credit laws do not apply to, or are not appropriate for, their products. The DFPI has made no such determination. In the past, regulatory actions in connection with emerging credit markets like these have been interpreted more broadly than the actions merited. (*See, e.g.*, Letter from Seth Frotman (January 18, 2022), CFPB Acting General Counsel, available at <<https://www.consumerfinance.com/wp-content/uploads/sites/14/2022/01/1456000-1456884-letter-from-s.-frotman-to-b.-ruggia-et-al-re-ewa-ao-1.18.22.pdf>>.) The proposed subdivision is necessary to avoid such confusion as to the intent of the DFPI's proposed registration regulations.

Section 1011, subdivision (b), provides that the act of granting registration to an applicant does not constitute a determination that an applicant's acts, practices, or business model complies with any law or regulation. The purpose of subdivision (b) is to clarify that the DFPI's approval of a registration is not approval of the registrant's business or confirmation of compliance with laws. The information submitted with the registration application is detailed but nonetheless limited. As such, although it may be possible in some cases to identify acts, practices or models that do not comply with laws or regulations, it is not possible for the DFPI, through its review of registration applicants, to reach a determination that all aspects of an applicant's proposed conduct comply with the law. The proposed subdivision is necessary to avoid confusion as to the meaning of a registration approval.

Section 1012. Representations Concerning Registration.

Section 1012, subdivision (a), provides that it is a deceptive practice for a registrant to represent that the registrant's acts or practices or business have been approved by the Commissioner or the DFPI. The purpose of this subdivision is to protect consumers from misleading or deceptive

information. The DFPI does not approve or endorse business models, and so it would be deceptive to say or imply as much in connection with the DFPI's act of granting a registration. The proposed subdivision is necessary to ensure registrants understand that it is unlawful to misrepresent that registration constitutes approval.

Section 1012, subdivision (b), requires registrants to disclose in any advertisement or communication, including on the internet or mobile app, to a consumer that the registrant is registered with the DFPI under the CCFPL and to provide the registrant's Department registration number in the advertisement or communication. The purpose of subdivision (b) is to protect consumers by ensuring that they know that the registrant's state regulator is the DFPI. The DFPI does not require the information to be stated in a specific order as long as the information identifies the Department of Financial Protection and Innovation, which may be abbreviated as "DFPI", as the state registration agency and the California Consumer Financial Protection Law, which may be abbreviated as "CCFPL", as the law. The proposed subdivision is necessary to help consumers identify the regulatory agency at the initial product advertising stage or to contact the DFPI with any concerns regarding the business practices or to make a complaint concerning the registrant.

Section 1020. Application for Registration and Related Forms.

Section 1020, subdivision (a), designates NMLS to receive applications and other filings, and to collect fees from applicants and registrants on behalf of the Commissioner. The CCFPL provides that the Commissioner is authorized to use NMLS to collect and maintain records and process fees related to the registration of covered persons.⁸⁷ NMLS is the electronic system of recordkeeping used by state regulators nationwide to register or license non-depository financial services providers. The purpose of subdivision (a) is to specify that the Commissioner has determined that using NMLS to submit applications and other filings electronically, instead of by paper, is convenient for applicants, registrants, and the Department, and the most efficient and effective way to register covered persons. Subsection (a) is necessary to inform applicants and registrants that the Commissioner will require registration applications to be filed and maintained and fees to be paid through NMLS.

Section 1020, subdivision (b), specifies that all documents and information must be filed through NMLS, including applications and amendments. The purpose of subdivision (b) is to specify that the Commissioner will require all filings to be made through NMLS unless indicated otherwise. Subdivision (b) is necessary to inform applicants that they must file applications and all other information electronically through NMLS.

Section 1020, subdivision (b)(1), provides how an applicant, authorized officer or other delegate of the applicant must sign any filing made through NMLS requiring a signature and clarifies that filings electronically signed constitute irrefutable evidence of legal signature. The purpose of subdivision (b)(1) is to clarify who is authorized to sign an application or other filing. The proposed subdivision is necessary to notify applicants how to electronically sign their filings in the NMLS digital environment.

Section 1020, subdivision (b)(2), provides that filings are not considered filed with the

⁸⁷Fin. Code, § 90009, subd. (a)(1).

Commissioner until the Commissioner receives all fees, and the filing is transmitted from NMLS to the Commissioner. The purpose of subdivision (b)(2) is to clarify when a filing is deemed complete. Subdivision (b)(2) is necessary to prevent any misunderstandings with applicants concerning when the application is filed.

Section 1020, subdivision (b)(3), provides that any documents that cannot be filed through NMLS must be filed directly with the Commissioner. NMLS is a uniform electronic recordkeeping system used by regulators nationwide and therefore the filing protocols are not specific to California regulatory requirements. NMLS may not have the capability to accept and transmit to the Commissioner some types of documents or information. The purpose of subdivision (b)(3) is to provide that in these cases the documents should be filed with the Commissioner. Subdivision (b)(3) is necessary to enable applicants and registrants to file documents if the documents cannot be filed through NMLS.

Section 1021. Registration Application.

Section 1021 requires applicants who offer or provide more than one type of subject product to separately register each subject product. Some applicants may offer or provide multiple subject products such as education financing and income-based advances. The purpose of the proposed regulation is to clarify that separate registration is required for each subject product offered or provided to California residents and that applicants must submit a registration application for each one. The annual reporting and other requirements are different for each type of subject product. The proposed regulation is necessary to ensure that applicants are reporting on all their subject products and the DFPI has adequate oversight of all subject products being offered or provided by applicants.

Section 1021, subdivision (a), requires the applicant to file Form MU1 in accordance with the instructions provided by NMLS, and requires that the applicant file all exhibits and supporting documents related to the applications and amendments through NMLS. The purpose of subdivision (a) is to clarify that an application is the Form MU1 and other documents and that the application must be filed through NMLS. Subdivision (a) is necessary to inform applicants how to apply for registration.

Form MU1 is the uniform filing form used by state regulators to register or license various financial services industries, including lenders and other providers of credit, and provides information on the company (or sole proprietor) registering or applying for a license. The information requested from the applicant in Form MU1 is necessary for the DFPI to determine whether an applicant meets the requirements for registration under the CCFPL. Item Number 1 of the form requires the applicant to identify the specific business activities in which it wishes to engage and be registered. This information is necessary to identify the type of registration that the applicant is seeking because Form MU1 is used for different types of business activities. Item Numbers 2 through 13 of the form request basic information about the applicant, including identifying information, primary company contacts, company legal status/structure, trade names, web addresses, books and records custodian information, and information regarding subsidiaries and affiliates. Item Number 14 requires the applicant to list the criminal, civil, regulatory, and financial history of the applicant and any affiliates controlling or controlled by the applicant. Item Numbers 15 and 16 require the applicant to list information identifying direct and indirect

owners, and executive officers. The execution section requires an officer or control person to represent that the information is current, true, and complete. The attestation is necessary to ensure the Department can hold the applicant accountable for the information the applicant provides in the form.

Section 1021, subdivision (a)(1), provides that applicants are not required to submit a list of approvals and designations, bank account information, or information concerning qualifying individuals on Form MU1. Form MU1 is the uniform filing form used by different state regulators. The purpose of subdivision (a)(1) is to identify the information on Form MU1 that the DFPI has determined is not necessary for purposes of registering persons under the CCFPL. The list of approvals and designations in Item Number 9 of the Form MU1 solicits information that it is largely inapplicable to the businesses that will be subject to registration and is therefore necessary. While bank account information in Item Number 10 may be relevant during examinations or investigations, the DFPI does not have a need for an applicant's bank account information at the time of application. While identifying qualifying individuals in Item Number 17 is required under some laws, the DFPI determined that this is not necessary for effective administration of the CCFPL's registration requirements because applicants must identify individuals responsible for their activities in California in other parts of the application. Subdivision (a)(1) is necessary to avoid having applicants file unnecessary information with the DFPI.

Section 1021, subdivision (a)(2)(A) through (D), provides instructions for how applicants must complete Item Number 1 of Form MU1 ("Business Activities.") The subdivision's purpose is to require applicants to identify their specific business activities as (A) debt settlement services, (B) student debt relief services, (C) education financing, or (D) income-based advances. Subdivision (a)(2)(A) through (D) is necessary to identify the type of registration that the applicant is seeking.

Section 1021, subdivision (a)(3), requires applicants to provide identifying information in Item Number 2 of Form MU1 ("Identifying Information"). The purpose of subdivision (a)(3) is to obtain basic information about the applicant. Requiring the entity's name, federal identification number, physical location address and mailing address, phone and fax number, toll-free phone number, email address, and whether the applicant will be operating from other business locations is necessary to help the DFPI identify, oversee, and contact registered businesses, and distinguish registered businesses from unregistered businesses. For example, by having the toll-free numbers of registered businesses, the DFPI will be able to determine more easily whether an advertisement for a subject product using a particular toll-free number is associated with an unregistered business.

Section 1021, subdivision (a)(4), requires applicants to list their fictitious business names in Item Number 3 of Form MU1, and to comply with California laws governing fictitious business names. The subdivision's purpose is to obtain all the names the applicant will be doing business under in California. Subdivision (a)(4) is necessary to protect consumers from being misled about a company's identity and make registrants aware that their fictitious business names must comply with California requirements. With access to a registrant's fictitious business names, the DFPI can more easily identify unregistered businesses, investigate consumer complaints related

to registrants, and identify registrant marketing when assessing whether that marketing complies with applicable laws.

Section 1021, subdivision (a)(5), requires applicants to provide the contact information for their agent for service of process in Item Number 4 of the Form MU1. The purpose of subdivision (a)(5) is to provide consumers, businesses, and other parties the ability to serve legal documents on the applicant in California by identifying the name and contact information of the agent. Requiring applicants to designate an agent for service of process is necessary to ensure that companies that apply for registration are complying with applicable California law designed to enable consumers to more easily initiate legal process to seek redress against businesses operating in California.

Section 1021, subdivision (a)(6), requires applicants to complete Item Number 5 on Form MU1 by providing the web addresses and any separate websites for fictitious business names the applicant will use to offer or provide consumer financial products or services to California residents and indicate whether the applicant will transact business through the websites. The purpose of subdivision (a)(6) is to help the DFPI better understand an applicant's product offerings to ensure that the applicant's application materials are complete, to prepare for examinations once an applicant has registered, and to identify registrants for risk-based examinations based upon information available on the registrant's websites. Subdivision (a)(6) is necessary to provide the DFPI with complete information to examine registrants or investigate complaints about the registrant's products or practices.

Section 1021, subdivision (a)(7), requires applicants to designate an individual as the primary contact employee for compliance and licensing information on Item Number 6 and an individual to receive consumer complaints from the DFPI on Item Number 7 of Form MU1. This subdivision's purpose is to identify the individuals the DFPI should contact for legal matters and consumer complaints concerning the registrant. Having the contact information for an applicant or registrant's preferred contact employee for compliance and licensing information is necessary to assist the DFPI in communicating with the applicant or registrant with respect to these matters. In addition, one way the DFPI protects consumers is by taking consumer complaints and sending those complaints to regulated entities for response and further investigation. This process can lead to positive resolutions for consumers and assists the DFPI in identifying unlawful business practices. This subdivision is necessary to facilitate this process by helping the DFPI route consumer complaints about registrants to the registrant's designated employees for investigation and response.

Section 1021, subdivision (a)(8), requires applicants to provide the name, address, phone and fax number, and email address of the applicant's records custodian in Item Number 8 of Form MU1. This subdivision's purpose is to provide the DFPI with the applicant's custodian of records to enable the DFPI to conduct the examinations required under Financial Code section 90007, subdivision (b). Requiring applicants to provide the name, address, and contact information of their records custodian is necessary to enable the DFPI to access registrants' records more quickly during examinations.

Section 1021, subdivision (a)(9), requires applicants to provide information related to its legal status, including its fiscal year end, its corporate form, the date and place it obtained its legal

status, and its stock symbol on Item Number 11 of Form MU1. The purpose of subdivision (a)(9) is to provide information about the applicant's organizational structure. Subdivision (a)(9) is necessary in assisting the DFPI in performing examinations. The DFPI can use this information to conduct background research related to a registrant before performing an examination and to better understand financial and corporate documents reviewed during the examination process.

Section 1021, subdivision (a)(10), requires applicants to provide the name, address, and description of each affiliate and subsidiary under common ownership or under the applicant's control that provide consumer financial products or services to California residents and an organization chart or document describing the relationship and percentage of ownership in Item Number 12 of Form MU1. The purpose of subdivision (a)(10) is to identify who owns or controls the applicant. Subdivision (a)(1) is necessary to assist the DFPI in performing examinations. Knowing that a registrant is related to other entities that offer consumer financial products and services in California will help DFPI examination staff better understand agreements between the registrant and related entities.

Section 1021, subdivision (a)(11), requires applicants to disclose whether it is controlled by certain financial institutions and to provide the name, address, and type of financial institution and the relationship of the institution to the applicant in Item Number 13 of Form MU1. The purpose of subdivision (a)(11) is to understand the applicant's relationship to a financial institution. This information is necessary to assist the DFPI in performing its examination and enforcement functions. Knowing that a registrant is controlled by certain financial institutions may assist the DFPI examination staff in resolving issues related to the registrant by addressing the issue to the financial institution directly or by contacting partner regulators who charter the financial institutions.

Section 1021, subdivision (a)(12), requires applicants to provide information on past criminal history, regulatory actions, civil actions, and financial history. The purpose of subdivision (a)(12) is to obtain information on the applicant's history. This information is necessary to assist the DFPI in performing its examination and enforcement functions. For example, applicants with a history of violating consumer financial protection laws may be prioritized for risk-based exams, and reporting of new violations when registrants annually update their applications may alert DFPI staff to issues that require follow-up with registrants (e.g., to ensure registrants have provided appropriate redress to California consumers).

Section 1021, subdivision (a)(13)(A), requires applicants to identify by name, title, federal identification number or social security number, NMLS identification number, and percentage of ownership interest in the applicant the individuals who control the applicant or who are primarily responsible for the applicant's offer or provision of subject products in California. These individuals will be required to submit a Form MU2.

Form MU2 is the uniform filing form used to provide information on individuals and key personnel associated with the company. Item Numbers 1 and 2 of Form MU2 requests individual identifying information. Item Number 3 requests residential history. Item Number 4 requests employment history. Item Number 5 requests other business activity. Item Number 6 requires disclosure of information regarding past bankruptcies, foreclosure actions, bonding, unsatisfied judgments or liens, child support delinquency, felonies and specified misdemeanors, financial services-related

civil actions, regulatory actions, and terminations. The information in these sections is necessary to develop examination priorities based upon an assessment of the risks presented by a registrants' key personnel. Item Number 9 requires a representation that the applicant reviewed and approved the individual's information on Form MU2. This information is necessary to ensure that the applicant is aware of any concerning information related to principals, owners and key personnel. Item Number 10 requires an acknowledgement and consent by the individual who is the subject of Form MU2. This provision is necessary to ensure the information is true and complete.

The purpose of subdivision (a)(13)(A)(i) through (viii) is to determine who is responsible for the applicant's conduct and activities in California. Subdivision (a)(13)(A)(viii) requires applicants to identify individuals "primarily" responsible for the applicant's activities. This is intended to capture individuals who are responsible for running the business and the regulated activities under a title not already included in the other specified categories. Whether any other individual will need to be identified in the registration application as "primarily responsible" will depend on each applicant's unique business structure. The category, however, is not intended to require applicants to report every professional who interacts with California consumers. The DFPI's regulatory interest is the individuals who are responsible for managing or overseeing the business, regulated activities, or major control functions of the business. Subdivision (a)(13)(A) is necessary to assist the DFPI in identifying registrants for risk-based examinations. During examinations and investigations of registrants, it is necessary to know who is responsible for the registrant's activities in the state and may be responsible for violations of California law. When identifying the registrants to prioritize for risk-based exams, the DFPI may consider whether registrants have management with a history of financial, criminal, civil, or regulatory issues.

Section 1021, subdivision (a)(13)(B), requires applicants to submit the Form MU2 in compliance with NMLS requirements and these proposed regulations and provides that applicants are not required to complete Sections J and K of Item Number 1, and Item Number 7 of the Form MU2 relating to passport information and fingerprints. The purpose of subdivision (a)(13)(B) is to identify the information in the Form MU2 that is not necessary for registration. The DFPI does not require passport information to effectively identify individuals associated with a registrant. The DFPI decided not to require fingerprints to promote efficiency in the registration process. Fingerprints and associated background checks could impose delays in registration. Rather than rely upon background checks, the DFPI will review the representations concerning individuals on the Form MU2. Individuals and applicants have a strong incentive to truthfully disclose information on the Form MU2, because those who misrepresent information may be subject to enforcement action. Subdivision (a)(13)(B) is necessary to avoid having applicants file unnecessary information with the Department.

Section 1021, subdivision (a)(14)(A) through (F), requires applicants to file a management chart identifying various individuals by name and title who are responsible for the applicant's operations. The purpose of these requirements is to identify the individuals who are responsible for the conduct of the applicant. Subdivision (a)(14)(C) requires applicants to identify individuals "primarily" responsible for the applicant's activities. This is intended to capture individuals who are responsible for running the business and the regulated activities under a title not already included in the other specified categories. Whether any other individual will need to be identified in the registration application as "primarily responsible" will depend on each

applicant's unique business structure. The category, however, is not intended to require applicants to report every professional who interacts with California consumers. The DFPI's regulatory interest is the individuals who are responsible for managing or overseeing the business, regulated activities, or major control functions of the business. Subdivision (a)(14) is necessary to enable the DFPI to know who is responsible for the registrant's activities in the state and may be responsible for violations of California law.

Section 1021, subdivision (a)(15)(A), requires applicants to provide a description of all products or services provided to California residents, including, but not limited to, subject products. The purpose of subdivision (a)(15)(A) is to assist the DFPI in understanding the basic structure of a registrant's subject products, as well as other products or services being offered to California residents. This requirement is necessary to assist the DFPI in protecting consumers and fulfilling the DFPI's market monitoring responsibilities and implementing examinations to assess the registrant's compliance with the CCFPL. The subdivision is also necessary to help the DFPI prevent evasions of the CCFPL's registration requirements. In financial services, providers often market or bundle multiple products together. To understand the net effect of registrants' subject products on consumers, it will be necessary to have a general understanding of the other products that registrants provide to California residents. Furthermore, it is possible that some companies may register with the DFPI while maintaining that none of the products or services they offer are subject to the DFPI's registration requirements. The DFPI must have a general understanding of these products or services before it conducts regulatory examinations so that it can assess the merits of registrants' positions and exercise appropriate oversight over products or services for which registration is required.

Section 1021, subdivision (a)(15)(B), requires applicants to submit a detailed schedule of charges associated with the products or services provided to California residents, and an explanation of how charges are set and determined. The purpose of this requirement is to assist the DFPI in fulfilling its market monitoring and examination responsibilities. Subdivision (a)(15)(B) is necessary because consumer cost is a critical factor in assessing the benefits and risks of subject products and subject products may be marketed together with other products, and therefore it is appropriate to consider the costs of subject products and other products offered by a provider.

Section 1021, subdivision (a)(15)(C), requires applicants to provide a description of how the applicant markets products to California residents, including identification of other entities the applicant uses to identify potential California residents for its products or services. The purpose of this requirement is to assist the DFPI in fulfilling its market monitoring and examination responsibilities. The subdivision is necessary to help the DFPI protect consumers. In the DFPI's experience, many financial services providers use third-party marketing to acquire new customers, and these third-party marketing partners may use unfair and deceptive advertising. Requiring registrants to identify their marketing and customer acquisition partners will help the DFPI deter such conduct through risk-based examinations and enforcement actions. This requirement is also necessary help the DFPI identify unlawful or unscrupulous marketing and customer-acquisition practices.

Section 1021, subdivision (a)(15)(D), requires applicants to disclose whether they offer or provide subject products to California residents through a mobile application. This requirement

is necessary to assist the DFPI in fulfilling its examination responsibilities. The subdivision is necessary to protect consumers. Many financial services providers offer products and services through mobile applications. This data is necessary to assist the DFPI in planning examinations and reviewing mobile applications, which will help the DFPI in understanding how registrants interact with consumers.

Section 1021, subdivision (a)(16), requires that the person attesting the filing of the Form MU1 must either be a duly authorized individual who has submitted a Form MU2 or someone who has been delegated the authority to attest by an individual who has submitted a Form MU2. The purpose of this requirement is to ensure the accuracy of the information provided in registration applications and that the application is filed by an individual with authority to do so on the applicant's behalf. Requiring duly authorized representatives of a company to attest to the accuracy of the filing is necessary to ensure that the DFPI can hold applicants accountable for misrepresentations made in a filing.

Section 1021, subdivision (b)(1), requires applicants to pay an application fee of \$350 to the DFPI through NMLS. **Subdivision (b)(2)** requires registrants to pay an annual renewal fee of \$100 to NMLS through NMLS. **Subdivision (b)(3)** provides that fees are not refundable. The proposed application fee of \$350 is based on the average examiner and administrative support staff costs for nine hours to review an application. The DFPI has determined that the proposed application fee reflects the current costs to perform these functions. The annual renewal fee of \$100 is the fee charged by NMLS for maintaining the registration. The CCFPL authorizes the DFPI to use NMLS to register covered persons and to process fees through NMLS. The purpose of subdivision (b)(1) through (3) is to identify the fees required to apply for registration and maintain registration through NMLS. This subdivision is necessary to inform applicants of the fee amounts charged by the DFPI and NMLS and how to pay the fees, ensure that applicants are aware that the fees are not refundable and they and not the DFPI are responsible for paying the NMLS fees to NMLS, and that the DFPI and NMLS recover costs associated with processing applications and maintaining registration records. Fees are not refundable because costs for application processing and record maintenance are incurred regardless of whether an application is abandoned or a registration is surrendered.

Section 1021, subdivision (c)(1) through (2), clarifies when an application is deemed complete and approved by the DFPI and when the DFPI will consider an application abandoned by an applicant. The purpose of subdivision (c) is to set forth the DFPI's process and timeframes for reviewing and approving applications, or considering applications abandoned. Subdivision (c) requires the DFPI to review applications within 30 days of submission of required forms and supplemental materials and payment of all required fees, and to either inform the applicant that the application is approved or that the application is incomplete and identify the information that is missing, and that the DFPI will deem the application abandoned if the applicant does not respond to the DFPI's notice of deficiency within 60 days. Based on the DFPI's experience in administering its other laws, the DFPI has determined that 30 days is necessary to provide the DFPI sufficient time to review the application and 60 days provides adequate time for an applicant to respond to the DFPI's request and submit the required information. Subdivision (c)(1) through (2) is necessary to make specific the registration process in Financial Code section 90009, subdivision (a)(1). Rules for timely application processing are necessary to set clear

expectations for the DFPI and applicants and help ensure the efficient administration of the registration process.

Subdivision 1021, subdivision (d)(1) and (2), sets forth the DFPI's process for reviewing the information submitted by an applicant in response to the notice of deficiency and requires the DFPI to review the information within 30 days of receiving it. The purpose of subdivision (d) is to set forth the DFPI's process and timeframes for reviewing, approving, or considering applications abandoned. Subdivision (d) requires the DFPI to inform the applicant that the application is now complete and approved or that the application is still incomplete and identify the information that is incomplete, and that the DFPI will deem the application abandoned if the applicant does not respond to the DFPI's notice of deficiency within 60 days. Subdivision (d) is necessary to make specific the registration process in Financial Code section 90009, subdivision (a)(1). Rules for timely application processing are necessary to set clear expectations for the DFPI and applicants and help ensure the efficient administration of the registration process.

Subdivision 1021, subdivision (e), clarifies that the DFPI shall deem an application abandoned when an applicant does not respond to any notice of deficiency within 60 days. The purpose of subdivision (e) is to set forth the process and timeframes for abandoning applications. Subdivision (e) is necessary to make specific the registration process in Financial Code section 90009, subdivision (a)(1). Rules for timely application processing are necessary to set clear expectations for the DFPI and applicants and help ensure the efficient administration of the registration process.

Subdivision 1021, subdivision (f), clarifies that the DFPI shall deem an application abandoned after the DFPI has provided three notices of deficiency to the applicant that the application is incomplete. The purpose of this regulation is address circumstances where the applicant keeps submitting incomplete information in response to the DFPI's notices of deficiency. Subdivision (f) is necessary to ensure the efficient administration of the registration process and that applicants understand that the DFPI will deem the application abandoned if the applicant does not submit complete information after receiving three notices of deficiencies from the DFPI.

Section 1021, subdivision (g), provides that the application fee paid in connection with an abandoned application shall not be refunded, and that an applicant whose application has been abandoned may reapply for registration. The purpose of these requirements is to make specific the registration process set forth in Financial Code section 90009, subdivision (a)(1). Not refunding the application fee is necessary to ensure that the DFPI recovers its costs of the application process, which the DFPI incurs regardless of whether an application is approved or abandoned. Permitting an applicant to reapply for registration is necessary to enable applicants to do business in California and ensure that applicants understand that they may still reapply for registration after their application is abandoned.

Section 1021, subdivision (h), provides that the requirement for the DFPI to inform applicants within 30 days whether the application is approved or incomplete in subdivision (c) does not apply to applications submitted before the effective date of the regulations. This subdivision complements proposed section 1010, subdivision (c), which allows prospective registrants who submit applications before the effective date of the regulations to continue to operate pending application approval or abandonment of their application. The purpose of this subdivision is to

promote efficiency for the DFPI. The DFPI anticipates a number of initial applicants for registration, and it may take some time for DFPI staff to process these applications. This subdivision is necessary to ensure that the DFPI has sufficient time to review initial applications without requiring the DFPI to incur the costs of hiring additional staff or delays in processing a temporary surge in registration applications.

Section 1021, subdivision (i), provides that for the purposes of these rules, the terms “license” and “licensee” on Forms MU1 and MU2 or other NMLS information shall mean “registration” or “registrant.” The purpose of this subdivision is to clarify the registration requirements. Because Forms MU1 and MU2 use license terminology, this subdivision is necessary to address potential confusion for applicants by clarifying that the requirements of the NMLS forms apply to CCFPL registration.

Section 1022. Supplemental Information – General.

Section 1022, subdivisions (a)(1) through (3), requires applicants to submit as part of the registration application images documenting the enrollment or application process for its products through mobile applications or websites, standard enrollment and applications used for subject products, and representative contracts and disclosures used for subject products, and to submit this information directly to the DFPI. The purpose of these requirements is to assist the DFPI in protecting consumers and monitoring markets. Representations made by registrants to consumers in enrollment or application documents and contracts play a significant role in shaping consumer behavior and understanding of covered products and services. This information is necessary to assist the DFPI in identifying models that may present risks for consumers, which in turn may be used to inform the DFPI’s policy work and risk-based examination priorities. Requiring the information to be submitted directly to the DFPI is necessary because NMLS does not at this time have the capability to accept and transmit this information to the DFPI.

Section 1022, subdivision (a)(4), requires applicants to submit as part of the registration application a list containing the addresses of branch locations from which they will offer or provide subject products, and to submit the information directly to the DFPI. The purpose of this requirement is to ensure that the DFPI knows where subject products are being offered or provided to California residents. Knowing where branches are located is necessary for the DFPI to identify locations for examination. Applicants will not be required to submit Form MU3 as part of the application to reduce the administrative burden of registration. Form MU3 is the uniform filing form used by NMLS to provide information on an applicant’s branch offices. Requiring the branch location information to be submitted directly to the DFPI is necessary because NMLS does not at this time have the capability to accept and transmit this information to the DFPI.

Section 1022, subdivision (a)(5), requires applicants to submit as part of the registration application the applicant’s gross income for the prior calendar year from subject products provided to California residents. The purpose of the requirement is to enable the DFPI to calculate the registrant’s initial annual assessment, which is based on the registrant’s gross income for the prior calendar year, pursuant to Section 1040. Registrants report their gross income information in their annual reports. The proposed requirement is necessary because the

DFPI needs the information before the annual reports are submitted by registrants. Requiring the information to be submitted directly to the DFPI is necessary because NMLS does not currently have the capability to accept and transmit it to the DFPI.

Section 1023. Supplemental Information – Debt Settlement Services.

Section 1023 requires debt settlement service providers to submit as part of the registration application copies of sample periodic account or activity statements provided to California residents if they provide statements, and to submit the information directly to the DFPI. The purpose of these requirements is to assist the DFPI in protecting consumers and monitoring markets. This information is necessary because periodic statements may provide information on how registrants inform consumers of costs incurred, amounts accrued for future settlement, debts settled, and financial benefits consumers have secured from settlements. Consumers may make decisions in reliance upon these representations. The proposed regulation does not require statements to be provided to residents but if the company does provide statements, the company must provide sample copies of the statements with the registration application. This information is necessary to assist the DFPI in identifying models that may present risks for consumers, which in turn may be used to inform the DFPI's policy work and risk-based examination priorities. Requiring the information to be submitted directly to the DFPI is necessary because NMLS does not at this time have the capability to accept and transmit this information to the DFPI.

Section 1024. Supplemental Information – Student Debt Relief Services.

Section 1024 requires student debt relief companies to submit as part of the registration application copies of sample periodic account or activity statements provided to California residents if they provide statements, and to submit the information directly to the DFPI. The purpose of these requirements is to assist the DFPI in protecting consumers and monitoring markets. This information is necessary because periodic statements may provide information on how registrants inform consumers of costs incurred and financial benefits consumers have secured from the services provided. Consumers may make decisions in reliance upon these representations. The proposed regulation does not require statements to be provided to residents but if the company does provide statements, the company must provide sample copies of the statements with the registration application. This information is necessary to assist the DFPI in identifying models that may present risks for consumers, which in turn may be used to inform the DFPI's policy work and risk-based examination priorities. Requiring the information to be submitted directly to the DFPI is necessary because NMLS does not at this time have the capability to accept and transmit this information to the DFPI.

Section 1025. Supplemental Information – Education Financing.

Section 1025, subdivision (a)(1), requires applicants for education financing to provide as part of the registration application a description of how they fund the education financing provided to California residents, including identifying any third-party partners who provide funding for the financing or who purchase any interest in the financing, and to submit the information directly to the DFPI. The purpose of this requirement is to protect consumers and monitor markets. Some registrants may advertise their willingness to extend financing to consumers as evidence of a shared interest in consumers' future success. This information is necessary to identify any person

who holds an interest in the education financing. When the registrants making those representations do not hold the investments they have purportedly made in consumers, representations concerning their shared interest in consumers' success may violate the CCFPL's prohibitions on unlawful, unfair, deceptive, or abusive acts and practices. Market monitoring of this activity is appropriate because monitoring efforts may inform future legislative or regulatory actions to ensure representations related to a provider's shared interest in a student's success accurately reflect who owns interests in education financing. Requiring the information to be submitted directly to the DFPI is necessary because NMLS does not at this time have the capability to accept and transmit this information to the DFPI.

Section 1025, subdivision (a)(2), requires applicants that originate education financing for postsecondary education to be provided by a third party to provide as part of the registration application all contracts in effect between the applicant and third-party providers, and to submit the information directly to the DFPI. The purpose of this requirement is to protect consumers and monitor markets. Third parties may make representations to consumers concerning the education financing that registrants extend to consumers. This information will help the DFPI monitor such representations for accuracy. The contracts between the registrant and third-party partners are necessary to assist the DFPI in assessing what contractual safeguards the registrant has in place to ensure its third-party partners comply with applicable law, which in turn may inform the DFPI's risk-based examination priorities or future regulatory work. Requiring the information to be submitted directly to the DFPI is necessary because NMLS does not at this time have the capability to accept and transmit this information to the DFPI.

Section 1025, subdivision (a)(3), requires applicants to submit all agreements in effect between applicants providing education financing and third-party servicers of that financing and to submit the information directly to the DFPI. The purpose of these requirements is to protect consumers. The information is necessary for the DFPI to ensure third-party services are properly licensed, and that servicing agreements do not include terms that may create incentives to violate consumer protection laws. Requiring the information to be submitted directly to the DFPI is necessary because NMLS does not at this time have the capability to accept and transmit this information to the DFPI.

Section 1025, subdivision (a)(4), requires applicants to provide as part of the registration application investor prospectuses and other marketing materials used for prospective investors in education financing originated by the applicant or any interest in the income streams arising from education financing originated by the applicant, and to submit this information directly to the DFPI. The purpose of this requirement is to protect consumers and monitor markets. Some registrants may advertise their willingness to extend financing to consumers as evidence of their confidence in consumers' future success. A registrant's assessment of consumers' prospects for future success may be reflected in the materials the registrant presents to investors. This information is necessary because when a registrant represents that it is confident in consumers' future success to induce consumers to accept financing, but communicates a less rosy picture to investors, this may violate the CCFPL's prohibitions on unlawful, unfair, deceptive, or abusive acts and practices. Marketing monitoring of this activity is appropriate because monitoring efforts may inform future legislative or regulatory actions to ensure registrants' advertising to consumers is fair and accurate. Requiring the information to be submitted directly to the DFPI is

necessary because NMLS does not at this time have the capability to accept and transmit this information to the DFPI.

Section 1026. Supplemental Information – Income-Based Advances.

Section 1026 requires providers of income-based advances to provide as part of the registration application copies of images documenting the process by which California residents request and repay income-based advances, and any standard notifications provided to California residents during the request and repayment process, and to submit this information directly to the DFPI. The purpose of this requirement is to protect consumers and monitor markets. This information is necessary to assist the DFPI in understanding how registrants interact with consumers, which may help the DFPI identify practices that violate the CCFPL. Furthermore, this information may help the DFPI identify practices that are appropriate for rulemaking. Market monitoring of this activity is appropriate because monitoring efforts may inform future regulatory actions to ensure registrants' interactions with consumers comply with applicable law. Requiring the information to be submitted directly to the DFPI is necessary because NMLS does not at this time have the capability to accept and transmit this information to the DFPI.

Section 1030. Confidentiality of Application Material.

Section 1030 provides that registration application materials shall be kept confidential in response to Public Records Act requests pursuant to Government Code section 7929.000, subdivision (a) and (d). Government Code section 7929.000, subdivisions (a) and (d), allow the DFPI to withhold from public inspection applications filed with the DFPI and information received in confidence by the DFPI. The purpose of this section is to protect registration applications from public disclosure. Although application materials submitted under some other laws that the DFPI administers are not confidential, the DFPI determined in the case of registration applications to extend the protections of Government Code section 7929.000 to these materials. This is necessary because many of the materials are likely treated as confidential by prospective registrants and registration is subject to sunset review after four years. During the sunset review period, the Legislature may make determinations concerning future public access to application materials if the Legislature elects to extend a registration regime or enact a substitute licensing regime. The language limiting the applicability of the section to Public Records Act requests is necessary to ensure the DFPI's ability to fulfill its statutory powers and responsibilities, which include improving accountability and transparency in the California financial system (Fin. Code § 90000, subd. (a)(4)), making public policy recommendations (Fin. Code § 90018, subd. (c)), reporting to the California legislature (Fin. Code § 90009.5, subd. (d)(2)), and issuing publications and reports to effectuate the CCFPL's purposes. (Fin. Code § 90006, subd. (a)(2).)

Section 1031. Designated Email Address.

Section 1031 requires registrants to provide a designated email address within five days of their application being approved and to consent to receiving information at that email address and provides that registrants are responsible for ensuring that their designated email address is current and functional. The purpose of these requirements is to assist the DFPI in communicating with its registrants. Financial Code section 331.50 requires licensees to notify the Commissioner

prior to changing their email address and to provide their new email address to the Commissioner and allows the Commissioner to charge a fine of up to \$50 per day, not to exceed a total of \$1,000, for failing to notify the Commissioner before changing the email address or failing to provide the new email address. The DFPI has found in the administration of its licensing regimes that requiring licensees to establish a designated email address facilitates communications with licensees by ensuring that the DFPI always has a means to contact a licensee regardless of employee turnover. The proposed section is necessary to provide a reliable means for the DFPI to communicate with registrants and ensure that registrants understand that they must notify the DFPI if they change their designated email address.

Section 1032. Notices to Registrants.

Section 1032 provides that any notice required by law or regulation, including assessment notices, may be delivered by emailing the notice to a registrant at their designated email address or through NMLS. The purpose of the requirement is to assist the DFPI in communicating with its registrants. The DFPI has found in the administration of its licensing regimes that using a designated email or NMLS to provide required notices ensures that the DFPI can more efficiently deliver the notices to licensees regardless of employee turnover at the licensee. The failure to pay an assessment is severe because it could result in the registrant's registration being revoked. The proposed section is necessary to ensure the registrants are aware that notices from the DFPI, including assessment notices, may be delivered to their designated email address or through NMLS.

Section 1033. False or Misleading Statements.

Section 1033 prohibits false and misleading statements in any application or report filed by an applicant or registrant with the Commissioner, prohibits false and misleading statements in proceedings before the Commissioner, and prohibits material omissions in any application or report. The purpose of this requirement is to facilitate the effective administration of the DFPI's regulations. This requirement is necessary, because as with any government agency with limited resources, the DFPI must be able to rely upon the completeness and accuracy of representations made by applicants and registrants to efficiently administer its regulations.

Section 1034. Notice of Changes.

Section 1034, subdivision (a), requires that registrants provide notice of any changes to the information in Item Number 2 (identifying information), Item Number 4 (resident/registered agent), and Item Number 6 (complaint contact) of Form MU1 within 30 days of the event that results in the information becoming inaccurate or incomplete. This purpose of this requirement is to ensure that the DFPI's information on registrants is current. Requiring changes to the information to be provided within 30 days of the change is necessary to ensure that the DFPI receives the information timely. Up-to-date information on the registrant's identifying information, agent for service of process, and contact person for complaints is necessary to enable the DFPI to effectively oversee registrants by knowing where they are and being able to contact them quickly to investigate complaints about them. The DFPI will forward consumer complaints to a registrant's designated consumer complaint contact rather than the registrant's designated email.

Section 1034, subdivision (b), requires that registrants provide notice of changes to other parts of their registration application (other than those covered by subdivision (a)) by December 31 of each calendar year and to clarify that with respect to investor prospectuses and marketing materials, education financing registrants are required to provide only the changes to the documents previously provided. The purpose of this requirement is to simplify the reporting requirements for registrants. Allowing registrants to update these parts of the registration application only once a year is necessary to simplify the requirement for registrants whose business models change frequently. Requiring a yearly update of the application materials is necessary to ensure that the DFPI still has a clear understanding of how a registrant operates in California.

Article 2. Annual Assessment and Annual Reporting

Section 1040. Annual Assessment.

Section 1040, subdivision (a), requires each registrant to pay an annual assessment based upon their pro rata share of all costs and expenses associated with registration for the next year. This pro rata share will be based upon the registrant's gross income from subject products provided to California residents. The purpose of this regulation is to ensure that the DFPI recovers its costs of administering CCFPL registration each year. Requiring each registrant to pay an assessment that is based gross income derived from subject products is necessary to ensure that all registrants pay an equitable proportion of the costs of administering CCFPL registration. The DFPI decided not to collect a flat fee to recover costs of registration because it would be inequitable to registrants who do less business in California. The DFPI decided not to collect a fee based on net income because it would effectively force companies with more profitable models to subsidize the cost of CCFPL registration for companies with less profitable models.

Section 1040, subdivisions (b) and (c), requires registrants to pay a minimum assessment amount of \$500 each year, requires the Commissioner to notify each registrant of its annual assessment by November 30, beginning November 30, 2024, and requires registrants to pay the assessment to the Commissioner through NMLS by December 31. Subdivision (b) requires registrants who report no gross income from subject products during the year in their annual reports and registrants whose reported gross income from subject products results in an assessment amount of less than \$500 as calculated under subdivision (a) of this section, to pay an assessment fee of \$500 for that year. Subdivision (b) is necessary to ensure that the DFPI recovers its costs in administering the registration program. The DFPI incurs costs regardless of whether registrants engage in any covered activity. Every registrant is required to file an annual report with the DFPI each year and the DFPI is required to review each report and to ensure that reports are filed by every registrant. Registrants may receive complaints about their business practices or products even though they did not receive any gross income during that year, The DFPI is still required to investigate these complaints and to ensure that the registrants have policies and procedures in place for handling complaints and that they filed their annual complaints report to the DFPI. Setting forth a regular timeline and process for annual assessment payments in subdivision (c) is necessary to ensure certainty for registrants. Subdivision (c) clarifies that the DFPI will begin levying assessments in 2024 and issuing the assessment notices to registrants by November 30, 2024, and requiring the assessments to be paid to the DFPI by

December 31, 2024. The registrant's gross income from subject products provided to California residents as reported to the DFPI pursuant to Section 1022, subdivision (a)(5), will be used to calculate the initial assessment in accordance with subdivision (a) or (b) of this section. Clarifying in subdivision (c) that the DFPI will begin levying assessments in 2024 is necessary to help registrants plan for them.

Section 1040, subdivision (d), allows the Commissioner to summarily revoke a registration if a registrant fails to pay or to timely pay their assessment, provides that revocation proceedings are subject to the Administrative Procedures Act, and prohibits a registrant whose registration has been revoked from offering or providing a subject product without the Commissioner's permission. The purpose of these provisions is to ensure that expectations related to annual assessments are clear for registrants and the DFPI, and allowing summary revocation when a registrant fails to pay is necessary to encourage registrants to pay their annual assessment on time. Prohibiting former registrants from continuing to engage in that business is necessary to protect consumers.

Section 1041. Annual Reporting – General.

Section 1041, subdivision (a), requires registrants to file an annual report by March 15 of each year, beginning March 15, 2025, and clarifies that an annual report must be filed with the Commissioner even if the registrant did not provide any subject products or engage in any activity under the registration in the calendar year. The purpose of the subdivision is to set forth the due date of the annual report and to clarify that every registrant is required to file an annual report each year. The DFPI requires licensees under other laws such as the CFL and CDDTL to file their annual reports by March 15. Some licensees under the CFL and CDDTL may need to file information on their education financing or income-based advance activities in the annual reports required under their license. Making the report due date in subdivision (a) the same date as the CFL and CDDTL is necessary to ensure that the information being reported is from the same reporting period. Requiring registrants to file annual reports when they did not engage in any activity under the registration is necessary to provide information on who is not actively operating and to help facilitate the DFPI's enforcement of the CCFPL by distinguishing these registrants from registrants that failed to file the annual report. The annual reports from registrants due by March 15, 2025, will report on the registrant's activities in 2024. The DFPI anticipates that the proposed regulations will become effective in November 2023 upon the Office of Administrative Law's approval of the regulations.

Section 1041, subdivision (b), requires registrants to provide their gross income for the prior calendar year from subject products provided to California residents. The purpose of the subdivision is to ensure that registrants understand the reporting requirement because a registrant's assessment is based on its gross income. Subdivision (b) is necessary to ensure that the DFPI receives the information required to calculate the annual assessments.

Section 1041, subdivision (c), provides that the Commissioner may by order summarily revoke the registration of a registrant if the registrant fails to file the report within 10 days after notice, clarifies that the revocation order is subject to an administrative hearing, and prohibits a registrant whose registration has been revoked from offering or providing a subject product unless permitted by order of the Commissioner. The purpose of the subdivision is to provide the

process for revoking a registration for failure to timely file the annual report. Subdivision (c) is necessary to ensure that the DFPI receives timely annual reports from registrants and that registrants understand the consequences of failing to file their annual reports.

Section 1041, subdivision (d), provides that the annual reports shall be kept confidential pursuant to Government Code section 7929.000, subdivisions (b) and (d). Government Code section 7929.000, subdivision (b) and (d), allows the DFPI to withhold from public inspection operating or condition reports filed with the DFPI, and information received in confidence by the DFPI. The purpose of this section is to protect annual reports from public disclosure. Although annual reports submitted under some other laws that the DFPI administers are not confidential, the DFPI determined in the case of annual reports to extend the protections of Government Code section 7929.000 to them. This is necessary because the information in the reports is likely treated as confidential by the registrants and registration is subject to sunset review after four years. During the sunset review period, the Legislature may make determinations concerning future public access to annual reports if the Legislature elects to extend a registration regime or enact a substitute licensing regime. The language limiting the applicability of the section to Public Records Act requests is necessary to ensure the DFPI's ability to fulfill its statutory powers and responsibilities, which include improving accountability and transparency in the California financial system (Fin. Code § 90000, subd. (a)(4)), making public policy recommendations (Fin. Code § 90018, subd. (c)), reporting to the California legislature (Fin. Code § 90009.5, subd. (d)(2)), and issuing publications and reports to effectuate the CCFPL's purposes. (Fin. Code § 90006, subd. (a)(2).)

Section 1042. Annual Reporting – Debt Settlement Services.

Section 1042 requires registrants who offer or provide debt settlement services to report the information in subdivisions (a) through (g) in the registrant's annual report. This information is necessary to assist the DFPI in executing its consumer protection and marketing monitoring functions. With respect to consumer protection, this information is necessary to allow the DFPI to identify more costly and less successful debt settlement programs and assess whether such programs market their products (and prospects for success) in compliance with applicable consumer financial protection laws. With respect to market monitoring, the information required under this section is necessary to allow the DFPI to assess the consumer benefits, risks, and costs associated with debt settlement products, which can help inform long-term policy discussions concerning appropriate laws and regulations for the debt settlement industry.

Section 1042, subdivision (a), requires registrants to report the number of California residents who contracted with the registrant to receive debt settlement services or who had an existing contract in effect. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (a) is necessary to provide information on the extent of the registrant's business activities with California residents.

Section 1042, subdivision (b), requires registrants to report the average number of debts each resident contracted for services with the registrant. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (b) is necessary to provide information on how many debts consumers enroll with debt settlement services, which,

when combined with the information required by subdivision (e), can better inform policy analysis concerning the benefits and risks of debt settlement programs.

Section 1042, subdivision (c), requires registrants to report the average dollar amount of debt per resident and the total dollar amount of debt of all residents who contracted for services. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (c) is necessary to provide information on the amount of debt under contract with the registrant, which can better inform policy analysis concerning consumer use of debt settlement products.

Section 1042, subdivision (d), requires registrants to report the average dollar amount of charges paid per resident over the contract term and the total dollar amount of charges paid by all residents, including charges paid to payment processors. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (d) is necessary to provide information on costs to consumers for the registrant's services.

Section 1042, subdivision (e), requires registrants to report the average number of debts per resident and the total number of debts for all residents where the resident has accepted a settlement with their creditor and made at least one payment towards that settlement. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (e) is necessary to provide information on how many debts consumers settle through a debt settlement service, which, when combined with the information required by subdivision (b), can better inform policy analysis concerning the benefits and risks of debt settlement programs.

Section 1042, subdivision (f), requires registrants to report the average amount owed upon execution of the contract and the average settlement based on the total of all payments due under each settlement. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (f) is necessary to provide information on the settlements being entered into by residents, which can inform policy analysis concerning the benefits of debt settlement programs.

Section 1042, subdivision (g), requires registrants to report the average length of time between execution of the contract for services and the first payment under each settlement. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (g) is necessary to inform policy analysis concerning debt settlement by helping the DFPI better understand how long consumers may need to wait before realizing benefits under debt settlement programs.

Section 1043. Annual Reporting – Student Debt Relief Services.

Section 1043 requires registrants who offer or provide student debt relief services to report the information in subdivisions (a) through (i) in the annual report. The information is necessary to assist the DFPI in executing its consumer protection and marketing monitoring functions. With respect to consumer protection, this information is necessary to allow the DFPI to identify more costly and less successful student debt relief programs and assess whether such programs market their products (and prospects for success) in compliance with applicable consumer financial

protection laws. With respect to market monitoring, the information required under this section is necessary to allow the DFPI to assess the consumer benefits, risks, and costs associated with student debt relief products, which can help inform long-term policy discussions concerning appropriate laws and regulations for the student debt relief industry.

Section 1043, subdivision (a), requires registrants to report the number of California residents who contracted with the registrant to receive student debt relief services or who had an existing contract in effect. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (a) is necessary to provide information on the extent of the registrant's business activities with California residents.

Section 1043, subdivision (b), requires registrants to report the average number of debts each resident contracted for resolution with the registrant. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (b) is necessary to provide information on how many debts consumers enroll with student debt relief services, which can better inform policy analysis concerning the benefits and risks of student debt relief services.

Section 1043, subdivision (c), requires registrants to report the total dollar amount and average dollar amount of federal student debt per resident contracted for resolution. Subdivision (c) is necessary to provide information on the amount of federal debt under contract with the registrant, which can better inform policy analysis concerning consumer use of student debt relief products.

Section 1043, subdivision (d), requires registrants to report the total dollar amount and average dollar amount of private student debt per resident contracted for resolution. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (d) is necessary to provide information on the amount of private debt under contract with the registrant, which can better inform policy analysis concerning consumer use of student debt relief settlement products.

Section 1043, subdivision (e), requires registrants to report the total dollar amount of charges paid by all residents and the average dollar amount of charges paid per resident over the contract term, including charges paid to payment processors. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (e) is necessary to provide information on costs of the services to residents to reduce their student debt.

Section 1043, subdivision (f), requires registrants to report the number of federal student debts for which the resolution specified in the contract has been reached and the average time it took to reach that resolution. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (f) is necessary to provide information on whether the services are successfully reducing federal student debt.

Section 1043, subdivision (g), requires registrants to report the number of federal student debts for which the resolution specified in the contract has not been reached and the average time between execution of the student debt relief contract and the date of the registrant's annual report. The purpose of the subdivision is to set forth the information that registrants must report

in their annual report. Subdivision (g) is necessary to provide information on whether the services are not successfully reducing federal student debt.

Section 1043, subdivision (h), requires registrants to report the number of private student debts for which the resolution specified in the contract has been reached and the average time it took to reach that resolution. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (h) is necessary to provide information on whether the services are successfully reducing private student debt.

Section 1043, subdivision (i), requires registrants to report the number of private student debts for which the resolution specified in the contract has not been reached and the average time between execution of the student debt relief contract and the date of the registrant's annual report. The purpose of the subdivision is to set forth the information that registrants must report. Subdivision (i) is necessary to provide information on whether the services are not successfully reducing private student debt.

Section 1044. Annual Reporting – Education Financing.

Section 1044 requires registrants offering or providing education financing to California residents to report the information in subdivisions (a) through (c) in the annual report. This reporting is necessary to assist the DFPI in executing its consumer protection and marketing monitoring functions. With respect to consumer protection, this information is necessary to allow the DFPI to identify more costly education financing providers and assess whether such providers market their products in compliance with applicable consumer financial protection laws. With respect to market monitoring, the information required under this section is necessary to allow the DFPI to assess the consumer benefits, risks, and costs associated with education financing, which can help inform long-term policy discussions concerning appropriate laws and regulations for the student debt relief industry. One commenter suggested that the DFPI use a reference to the United States Code when referencing annual percentage rates under Regulation Z. The DFPI did not adopt this recommendation because the change does not further clarity and would be inconsistent with how the Legislature chose to reference annual percentage rates under Financial Code section 22332.

Section 1044, subdivision (a), requires registrants to report the number of education financing contracts entered into with California residents and the number of contracts with income-based payment provisions. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (a) is necessary to provide information on the extent of the registrant's business activities with California residents.

Section 1044, subdivision (b)(1) through (3), requires registrants to report the total dollar amount advanced, the total amount owed, and a distribution of the annual percentage rates disclosed for all contracts without income-based payment provisions. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (b)(1) through (3) is necessary to provide information on income-based payment provisions for education financing.

Section 1044, subdivision (c)(1), requires registrants to report the total dollar amount advanced by the registrant and provides the method for registrants who are providers of the education program to determine that amount. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. If the registrant is also the provider of education programs to students, subdivision (c)(1) requires the provider to add the cash price of the education programs for which financing is provided to any direct payments made to recipients for various listed education-related expenses. The provider must subtract from the result of this calculation any payments made or to be made by recipients that are not required payments under the financing contract. These requirements are necessary to provide certainty to registrants as to how to report amounts advanced to California residents. Without these requirements, different providers may calculate amounts advanced differently, which would lead to less reliable reported data.

Subdivision (c)(1) specifies that the cash price of an education program provided remotely shall be the lowest available cash price for the remote program provided by the registrant in any United States jurisdiction, regardless of whether that cash price is available to California residents. This requirement is necessary for the DFPI to identify the true value of the education programs being provided to California consumers. Without this requirement, a registrant that provides an education program that relies primarily upon education financing could calculate the amount advanced to recipients using an inflated California sticker price for the purpose of understating the true cost of financing, as reflected by the maximum amounts due from consumers. Where a registrant provides education programs remotely, the California sticker price for a program is likely a less reliable indicator of the true value of the education program than the lowest available cash price available in any other United States jurisdiction. The lowest available cash price is likely a more reliable indicator of the true cash value of a program because programs provided remotely are unlikely to vary with respect to costs of delivery and benefits provided to students in different United States jurisdictions.

Section 1044, subdivision (c)(2), requires registrants to report the distribution of the annual percentage rates disclosed for those contracts, if applicable. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (c)(2) is necessary to provide information on the annual percentage rates being charged on education financing contracts.

Section 1044, subdivision (c)(3), requires registrants to report the total maximum amount due under the contracts. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (c)(3) is necessary to provide information on the amount of debt under education financing contracts.

Section 1044, subdivision (c)(4) and (5), requires registrants in subdivision (c)(4) to report the distribution of the income thresholds under which no payments are required and the number of contracts to which each income threshold applies; and in subdivision (c)(5) to report the distribution showing the time thresholds after which no payments are required and the number of contracts to which each time threshold applies, and a description of any contractual provisions that result in extensions of time thresholds and the distribution of the number of contracts to which each provision applies. The purpose of the subdivision is to set forth the information that

registrants must report in their annual report. Subdivision (c)(4) and (5) is necessary to provide information related to payment requirements.

Section 1044, subdivision (c)(6), requires registrants to report the distribution of the percentage of income that residents must pay under their contracts and the number of contracts to which each percentage applies. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (c)(6) is necessary to provide information on how much of a resident's income is required to repay the education financing.

Section 1044, subdivision (c)(7), requires registrant to report the distribution of the maximum number of payments required under the contract and the number of contracts to which each maximum number applies, and a description of any contractual provisions that result in an increase to the required number of payments and the distribution of the number of contracts to which each provision applies. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (c)(7) is necessary to provide information on repayment terms and how long it takes to repay education financing contracts.

Section 1045. Annual Reporting – Income-Based Advances.

Section 1045, subdivisions (a) and (b), require registrants providing income-based advances to report the total amount of charges paid by obligors and the number of California residents who did not receive at least one income-based advance but who paid a subscription fee to the registrant, and the total amount of subscription fees paid by those consumers. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivisions (a) and (b) are necessary to assist the DFPI in executing its consumer protection and marketing monitoring functions. This information is necessary to allow the DFPI to understand the costs associated with income-based advances, and identify programs where registrants collect subscription fees from substantial numbers of California residents without providing any income-based advances. With respect to market monitoring, the information required in subdivisions (a) and (b) is necessary to allow the DFPI to assess the risks and costs associated with income-based advances, which can help inform long-term policy discussions concerning appropriate laws and regulations for the income-based advance industry.

Section 1045, subdivision (c)(1) through (3), requires registrants providing income-based advances to report the total dollar amount and number of income-based advances made, and the amounts of all charges paid; the average length of time between when each advance is made and each advance's collection date; and the average length of time between when income-based advances are made and when they are repaid and requires registrants to credit collections to the oldest advances first. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (c)(1) through (c)(3) is necessary to provide information on the extent of the registrant's business activities with California residents, the cost of income-based advances to residents, and how long it takes to repay income-based advances. This information is necessary to allow the DFPI to understand the costs and benefits associated with income-based advances, how costs may compound over time, and whether registrants are accurately calculating consumers' accrued but unpaid income.

Section 1045, subdivision (c)(4), requires registrants to report for non-obligor-based advances, the number of times that the amount collected on a collection date was less than the total amount due from the consumer, and of these instances, the number of times the provider collected nothing on the collection date, the total dollar amount due and the total dollar amount collected on the original collection dates, the number of times when the provider attempted to collect from the consumer's bank account, the number of subsequent collection attempts from the consumer's bank account made by the registrant, and the total amount collected after the collection date. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (c)(4) is necessary to provide information on the collection activities of providers. Models that involve high numbers of unsuccessful collection attempts from consumers' bank accounts may be subject to further review because such models may result in other third-party charges such as overdraft fees. This subdivision is necessary to assist the DFPI in executing its consumer protection and marketing monitoring functions. With respect to market monitoring, the information is necessary to allow the DFPI to assess the benefits, risks and costs associated with income-based advances, which can help inform long-term policy discussions concerning appropriate laws and regulations for the income-based advance industry.

Section 1045, subdivision (c)(5), requires registrants to report for obligor-based advances, the number of times the amount collected on the collection date was less than the amount due, the number of times the provider collected nothing on the collection date, the total amount due and total amount collected on the original collection dates, and the total amount collected after the collection date. The purpose of the subdivision is to set forth the information that registrants must report in their annual report. Subdivision (c)(5) is necessary to provide information on the collection activities of providers. Models that involve high numbers of unsuccessful collection attempts from consumers' bank accounts may be subject to further review because such models may result in other third-party charges such as overdraft fees. This subdivision is necessary to assist the DFPI in executing its consumer protection and marketing monitoring functions. With respect to market monitoring, the information is necessary to allow the DFPI to assess the benefits, risks and costs associated with income-based advances, which can help inform long-term policy discussions concerning appropriate laws and regulations for the income-based advance industry.

Section 1045, subdivision (d)(1) through (7), requires registrants to report for each month and quarter of the calendar year, the number of residents who received no income-based advances but who paid a charge to the registrant and the total dollar amount of charges paid by those residents in subdivision (d)(1); and the number of residents who received one to six or more advances, the total dollar amount of these advances, and the total dollar amount charges paid by those residents in subdivision (d)(2) through (d)(7). The purpose of the subdivision is to set forth the information that registrants must report in their annual report. This information is necessary to assist the DFPI in executing its marketing monitoring functions. The information necessary to allow the DFPI to assess the benefits and costs associated with income-based advances based upon the frequency with which residents use income-based advances, which can help inform long-term policy discussions concerning appropriate laws and regulations for the income-based advance industry. Some commenters preferred less detailed reporting on use frequency and suggested only requiring reporting for each quarter or year. The DFPI did not adopt these recommendations because the data required to maintain accurate records of advances made in a quarter or year is the same data required to track the number of advances made in a month. If the

DFPI required only quarterly data, this would make it difficult to determine whether significant numbers of consumers are taking multiple advances each month and incurring significant charges in connection with frequent use.

Article 3. Revocation and Surrender

Section 1048. Rescission of Summary Revocation Order.

Section 1048, subdivision (a), requires the Commissioner to rescind a summary revocation order issued for failure to pay an annual assessment or to file an annual report if the registrant whose registration has been summarily revoked submits a written request to the Commissioner within 180 days of the date of revocation, pays an administrative fine, and pays the annual assessment or files the annual report. The purpose of the subdivision is to allow former registrants to reinstate their registration. Rescission has the practical effect of reinstating registration to the date of revocation. Subdivision (a) is necessary to help ensure the efficient administration of the DFPI's registration requirements. Summary revocation is an important tool that creates a strong incentive for registrants to submit their annual reports and pay their annual assessments on time. However, based upon experience with licensees under other laws, the DFPI anticipates that some registrants may inadvertently fail to submit an annual report or pay an annual assessment. In such cases, the DFPI and former registrants can save time with a clear process to reinstate former registrants who submit their requests for reinstatement within 180 days of summary revocation.

Section 1048, subdivision (a)(1) through (5), provides the amount of the administrative fine. The administrative fine is \$100 if the request is received within 14 days of the date of revocation, \$200 if the request is received 15 days to 30 from the date of revocation, \$400 if the request is received 31 days to 60 days from the date of revocation, \$600 if the request is received 61 days to 90 days from the date of the date of revocation, and increases \$10 per day after 90 days up to 180 days. The initial administrative fine amount of \$100 will reimburse the DFPI for DFPI staff time required to process the written request and reinstate the registration, and to create some financial incentive for registrants to submit their annual reports and assessments on time. The administrative fine increases over time at reasonable amounts to penalize former registrants who continue to delay paying their assessments or filing their reports with the DFPI. Subdivision (a) is necessary to encourage former registrants to promptly pay their assessments or file their late reports.

Section 1048, subdivision (b), provides that rescission of the summary revocation order is effective as of the date of revocation. The purpose of subdivision (b) is to clarify that the registration remains in effect during the time the registration was revoked. Subdivision (b) is necessary to facilitate the efficient administration of the CCFPL and to clarify for registrants that any activities conducted during the revocation period would not be subject to enforcement action as unregistered activities unless the registrant is using the reinstatement process to evade the CCFPL registration requirements.

Section 1048, subdivision (c), clarifies that the reinstatement of a registration does not preclude the Commissioner from bringing an action for failure to maintain a registration as required by the regulations. The purpose of the subdivision is to ensure that former registrants do not

misinterpret this section as limiting the Commissioner's enforcement powers. Subdivision (c) is necessary because there may be circumstances in which enforcement action is necessary to ensure that a former registrant complies with its registration obligations or does not abuse the reinstatement process for its own benefit.

Section 1050. Effectiveness of Registration.

Section 1050 provides that a registration is effective until it is revoked by the Commissioner, surrendered by the registrant, or becomes inoperative under the Financial Code. The purpose of this subdivision is to clarify when a registration is in effect. The proposed regulation is necessary to provide clarity to registrants as to the effect and duration of registration by outlining the circumstances in which a registration is no longer effective.

Section 1051. Surrender of Registration.

Section 1051, subdivisions (a) and (b), provides that a request to surrender a registration must be filed on Form MU1 with NMLS, and that surrender becomes effective when approved by the Commissioner. The purpose of these subdivisions is to provide the process for surrendering a registration. Subdivisions (a) and (b) are necessary to enable registrants to surrender their registration and to clarify that the Commissioner's approval is required to surrender a registration.

Section 1051, subdivisions (c) and (d), provide that surrender does not affect a registrant's liability for acts committed before surrender and does not relieve registrants of accrued registration obligations, including paying any fees and fines and filing any reports. The purpose of these subdivisions is to provide clarity to registrants as to the effects of surrender. Subdivisions (c) and (d) are necessary to ensure that registrants understand that they cannot use surrender to avoid obligations imposed by registration.

Section 1052. Revocation of Registration.

Section 1052 sets forth the process for and effect of registration revocation under Financial Code section 90015, subdivision (f). Financial Code section 90015, subdivision (f), provides that the DFPI may, after notice and an opportunity for a hearing, suspend or revoke a registration if, in the DFPI's opinion, the person is engaging, has engaged, or proposes to engage in an activity, act, or course of business that violates a law, rule, order, or any condition imposed in writing on the person by the DFPI. The purpose of Section 1052 is to clarify that revocation under subdivision (f) of Financial Code section 90015 is subject to the formal administrative adjudication process under the Administrative Procedure Act and that entities whose registrations are revoked may not offer or provide subject products unless permitted to do so by order of the Commissioner. Section 1052 is necessary to help ensure registrants understand the revocation process and that they are prohibited from engaging in business pending administrative adjudication.

Subchapter 6. California Financing Law

Article 3. Books, Record and Examinations

Section 1430.1. California Consumer Financial Protection Law Registration Exemption: Reporting.

Section 1430.1 clarifies the registration exemption set forth by Financial Code section 90009, subdivision (a)(2)(A), for CFL licensees when offering or providing income-based advances or education financing by defining what it means to offer these products “within the scope of” a CFL license. This section is necessary to clarify the statutory exemption, because otherwise there may be confusion as to what it means for a product to be offered or provided “within the scope of” a CFL license. To be “within the scope of” a CFL license, a licensee must meet three requirements set forth more fully below.

Section 1430.1, subdivision (a)(1) through (3), states that “within the scope of its license” (as the term is used in Financial Code section 90009, subdivision (a)(2)(A)) means offered and provided to comply with the CFL’s requirements for consumer loans and pursuant to the authority conferred by a CFL lender’s license and reported as CFL lending activity in a CFL licensee’s annual report. The purpose of the requirements in subdivision (a)(1) through (3) is to prevent businesses from using a CFL license to evade the CCFPL’s registration requirements and ensure that the DFPI is capturing complete information on income-based advances and education financing that are being made to California residents. Subdivision (a)(1) and (2) are necessary to ensure that the protections of the CFL apply to income-based advances and education financing made under that law. Subdivision (a)(3) is necessary to clarify the DFPI’s examination authority under the CFL and prevent businesses from evading oversight under CCFPL registration and the CFL. Without this requirement, a business may seek to evade oversight under CCFPL registration by applying for a CFL license and representing to CFL program staff that it is doing no CFL-related business, and only originating education financing contracts or income-based advances that the company claims fall outside the CFL. The company may further maintain that because their business activities do not involve CFL loans, the DFPI has no authority to examine the conduct for compliance with the CCFPL. The DFPI does not concede that any of these arguments would have merit. However, the DFPI believes that addressing this issue through rulemaking will help the DFPI avoid time-consuming disputes with licensees with respect to the DFPI’s examination authority.

Section 1430.1, subdivision (b), requires CFL licensees who are exempt from registration to submit a special report that includes the same information that will be required of registrants. The purpose of this requirement is to ensure the DFPI has a complete picture of the markets for income-based advance and education financing products. This requirement is necessary because the reporting requirements for income-based advance and education financing products set forth in the CCFPL registration regulations are not included in the CFL’s general annual report requirements.

Section 1430.1, subdivision (c), provides that in response to Public Records Act requests, special reports shall be kept confidential pursuant to Government Code section 7929.000, subdivisions (b) and (d). Government Code section 7929.000, subdivisions (b) and (d), allows the DFPI to withhold from public inspection operating and condition reports filed with the DFPI and information received in confidence by the DFPI. The purpose of this section is to protect the reports from public disclosure. Although annual reports under the CFL are subject to public

inspection, the DFPI determined in this case that information submitted under proposed section 1430.1 should be subject to the protections of Government Code section 7929.000 because the information is likely treated as confidential by the licensees and the DFPI is proposing in these regulations to protect the same information from public disclosure when submitted by registrants under the CCFPL. The CCFPL registration requirements are subject to sunset review after four years. During the sunset review period, the Legislature may make determinations concerning future public access to annual reports for registrants if the Legislature elects to extend a registration regime or enact a substitute licensing regime. The DFPI may reconsider whether future special reports submitted pursuant to this section should be subject to public inspection at that time.

Article 4. Loans.

Section 1461. Cash Advances Under the California Financing Law.

Section 1461, subdivision (a), interprets Financial Code sections 22203 (defining “consumer loan”) and 22335 (incorporating into the definition of consumer loan any “sale or assignment” of wages, “whether earned or to be earned”) as covering any advance to be repaid in whole or in part by receipt of a consumer’s wages, regardless of the payment arrangement agreed to between the consumer and the advance provider. This subdivision recognizes, consistent with the CFL’s history, that when a consumer engages in transactions that resemble factoring with respect to their wages, those transactions fall within the CFL’s scope.⁸⁸ This subdivision also reflects that courts liberally interpret statutory consumer protections related to the sale or assignment of wages.⁸⁹ For example, in *Lande v. Jurisich* (1943) 59 Cal.App.2d 613, 619, the court found that the Legislature enacted protections related to assignments of wages in the Labor Code “to reach every form of instrument which would result in the impounding of a wage earner’s wages before he received them.” Current earned wage access and income advance models achieve exactly this end by making direct arrangements with employers to collect a consumer’s wages, or by timing debits from a consumer’s bank account to coincide with when a consumer’s wages are deposited into their account.⁹⁰ The purpose of this regulation is to provide further clarity on the meaning of “loan” under the CFL, and to ensure that all consumers receive the benefit of statutory protections created by the Legislature when they receive cash advances secured by their earnings. This regulation is necessary so that providers of cash advances secured by wages understand that they must operate under the DFPI’s oversight and comply with the CFL rate protections the Legislature has enacted.

Section 1461, subdivision (a), also clarifies that the financial transactions described are subject to the CFL even if the provider has no legal recourse if the provider is unable to collect the amount

⁸⁸ Language relating to the sale or assignment of wages was drafted so that “all wage purchases, whether *bona fide* or not” would be subject to lending regulations. (F. B. Hubachek, “The Development of Regulatory Small Loan Laws,” 8 Law and Contemporary Problems 108-145, 138, 142 (Winter 1941), available at <https://scholarship.law.duke.edu/lcp/vol8/iss1/11>.)

⁸⁹ The Legislature has also mandated that the DFPI and the courts interpret the CFL “liberally” to protect borrowers. (Fin. Code § 22001, subd. (a)(4).)

⁹⁰ See, e.g., <<https://www.payactiv.com/faq/>> (“Funds accessed using PayActiv will show as deductions on your next paycheck”); <<https://help.earnin.com/hc/en-us/articles/213412907-How-can-I-pay-Earnin-back->> (“On your payday, Earnin will automatically debit your bank account for the amount you cashed out, plus any tips you decide to Pay Forward.”).

advanced, or the consumer has the right to cancel collection of an amount advanced. These provisions are consistent with the language of Financial Code section 22335, which does not include any exceptions for transactions that have these features. This interpretation is also grounded in section 22335's history, which was adopted to prevent the unregulated factoring of consumer's wages, regardless of whether the arrangement involved a truly non-recourse sale of the consumer's wages. (See the Commissioner's OP 8206 ("The drafters of the proposed law decided to control the practice [of wage assignments] by subjecting 'all wage purchases, whether bona fide or not, to the small loan law.'" (citing F.B. Hubacheck, *The Development of Regulatory Small Loan Laws*, *supra.*) (available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2022/02/FINAL-OP-8206-FlexWage-Specific-Ruling.pdf>>)). Finally, this interpretation is also grounded in the way consumers use modern wage-advance products. Courts often consider an alleged lender's "risk of capital loss" when assessing whether a product should be treated as a loan. (See, e.g., *Bistro Executive, Inc. v. Rewards Network, Inc.* (C.D. Cal., July 19, 2006, No. CV 04-4640 CBM MCX) 2006 WL 6849825, at *7.) In the case of modern wage advance products, industry data covering multiple wage advance models suggests that the risk of capital loss is remarkably low. (See Financial Health Network "Earned Wage Access and Direct-to-Consumer Advance Usage Trends," at p. 2 (April 2021) (finding that advances "were recouped successfully at least 97% of the time).) This suggests that even if consumers have legal or contractual rights to cancel collection, these occurrences are extremely rare. Given the low risk that wage advance providers will not recoup their capital, it is even more appropriate to treat modern wage advance products as loans subject to regulation under the CFL. (See *Oasis Legal Finance Group, LLC v. Coffman* 2015 CO 63 (finding that litigation advance contracts are loans under Colorado law where, in 85 percent of transactions, the companies fully recovered what was due under the contract).) The purpose of this subdivision is to ensure that all cash advances to be repaid by collection of a consumer's wages are subject to adequate oversight. Subdivision (a) is necessary to ensure that providers understand that limitations on collection do not operate to exclude companies from regulation. For the reasons set forth above, the DFPI declined to adopt a recommendation from the Electronic Transactions Association that the DFPI exempt income-based advance products from the DFPI's licensure regimes.

Section 1461, subdivision (a), further clarifies that payments made by obligors (employers or others who owe money to a consumer because of a service the consumer has rendered) are not necessarily subject to the CFL pursuant to subdivision (a). This subdivision is not intended to imply that obligors are categorically excluded from the CFL when making advances that will be repaid by receipt of a consumer's wages. (See OP 8206, p. 5.) However, employer-funded advances before a consumer's payday are not necessarily subject to the CFL, because in some cases the employer may not be providing money "for temporary use." (See "Loan," *Black's Law Dictionary* (11th ed. 2019).) This subdivision's purpose is to ensure that employers who pay consumers earned wages in advance of consumers' paydays are not categorically subject to the CFL when regulation under the CFL may not be appropriate due to the employer's preexisting obligation to pay the employee based upon services rendered. Subdivision (a) is necessary to avoid application of the CFL's licensing requirements to transactions where they may not always be appropriate, particularly when it does not appear that advance funds are provided for temporary use.

Subdivision's (a) interpretation of Financial Code sections 22203 and 22335 would also apply to contracts commonly referred to as income share agreements. This interpretation is consistent

with the DFPI's past activities in the enforcement of the Student Loan Servicing Act.⁹¹ Furthermore, this interpretation is appropriate, because, in the DFPI's experience, income share agreements create a relationship in which a consumer agrees to pay a provider a percentage of the consumer's earned wages for a set period. In other words, income share agreements are, for all practical purposes, an assignment of a portion of the consumer's wages or earnings. Furthermore, such contracts would not be economically viable at scale if the most consumers did not ultimately pay back more than they owe. The reasoning in the above paragraphs concerning liberal interpretations of law relating to the sale or assignment of wages applies equally to income share agreements.

Section 1461, subdivision (b), clarifies that a consumer who receives an advance under subdivision (a) of this section is a borrower and a provider who makes an advance is a finance lender within the meaning of the CFL. This subdivision's purpose is to prevent evasions of the CFL. This subdivision is necessary to prevent lenders subject to licensure from claiming, notwithstanding subdivision (a), that they are not lenders within the scope CFL or that consumers they deal with are not borrowers.

Section 1461, subdivision (c), clarifies that to determine whether an advance of funds is to be repaid in whole or in part by receipt of wages, the source of funds by which the lender ordinarily collects its advances in similar transactions may be considered. This subdivision's purpose is to prevent evasions of the CFL and protect consumers, and to avoid approaches that would elevate form over substance in evaluating whether a transaction is subject to the CFL.⁹² This subdivision is necessary to ensure that providers of wage-based advances cannot avoid CFL jurisdiction simply because their contracts with consumers are silent as to the source of funds used for repayment. In such cases, if the provider ordinarily collects consumers' wages (e.g., by collecting them when they are deposited in a consumer's bank account on payday) to recoup amounts advanced in similar transactions, then that information may be considered when assessing whether subdivision (a) of this section applies.

Section 1462. Licensure of Advance Providers – Income-Based Advances.

Section 1462, subdivision (a)(1) through (3), creates an exception from CFL licensure for providers of advances under proposed section 1461 if the advances are income-based advances, the providers register with the DFPI pursuant to the DFPI's authority under the CCFPL, and the providers collect charges that are no greater than the charges permitted under the CFL. The purpose of subdivision (a) is to clarify that CCFPL-registered providers of income-based advances who collect charges no greater than those permitted under the CFL are not "in the business" of a finance lender under the CFL. Subdivision (a) is necessary to avoid duplicative regulation of these providers. In the past, the DFPI has reasoned that providers of certain types of financing may not be "in the business" of the CFL if applying the CFL is not necessary to fulfill

⁹¹ See Meratas Consent Order, available at <<https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/08/Meratas-Consent-Order.pdf>>.)

⁹² "Although the constitutional and statutory provisions dealing with usury speak only in terms of a 'loan' or a 'forbearance' of money or other things of value, the courts, alert to the resourcefulness of some lenders in fashioning transactions designed to evade the usury law, have looked to the substance rather than the form of such transactions in assessing their effect and validity..." *Boerner v. Colwell Co.* (1978) 21 Cal.3d 37, 44.

the CFL's purposes.⁹³ Two of the CFL's core consumer protections are regulatory supervision and rate protections. (See Fin. Code, §§ 22100 (licensure), 22303, 22304.5 (rate caps).) Because CCFPL registrants would be subject to DFPI oversight and would not be permitted to charge amounts exceeding CFL rate caps, licensure under the CFL will be unnecessary to fulfill the CFL's core consumer protection purposes.

Sections 1462, subdivision (b), provides that the proposed exemption from CFL licensure for income-based advance providers expires when the registration requirements for income-based advance providers under the CCFPL expire. Financial Code section 90009.5 provides that these regulations shall become inoperative in four years from the initial year of required registration unless the Legislature takes action to extend the registration. The purpose of this subdivision is to ensure that CCFPL-registered income-based advance providers are subject to appropriate supervision required under the CFL if they are no longer required to be registered under the CCFPL. Subdivision (b) is necessary to ensure that previously-registered income-based advance providers do not mistakenly rely upon the exemption in subdivision (a) of this section after their respective registration requirements expire.

Section 1462.5. Licensure of Advance Providers – Education Financing.

Section 1462.5, subdivision (a)(1) through (3), creates an exception from CFL licensure for providers of advances under proposed Section 1461 if the advance of funds is education financing with income-based payment provisions, the providers register with the DFPI pursuant to the DFPI's authority under the CCFPL or are licensed student loan servicers exempt from registration under section 2044.1 of the proposed rules, and the providers collect charges that are no greater than the charges permitted under the CFL. The purpose of subdivision (a) is to clarify that CCFPL-registered providers of education financing with income-based advances who collect charges no greater than those permitted under the CFL are not "in the business" of a finance lender under the CFL. Subdivision (a) is necessary to avoid duplicative regulation of these providers. In the past, the DFPI has reasoned that providers of certain types of financing may not be "in the business" of the CFL if applying the CFL is not necessary to fulfill the CFL's purposes.⁹⁴ Two of the CFL's core consumer protections are regulatory supervision and rate protections. (See Fin. Code, §§ 22100 (licensure), 22303, 22304.5 (rate caps).) Because CCFPL registrants and SLSA licensees would be subject to DFPI oversight and would not be permitted to charge amounts exceeding CFL rate caps, licensure under the CFL will be unnecessary to fulfill the CFL's core consumer protection purposes.

Sections 1462.5, subdivision (b), provides that the exemption from CFL licensure expires when the registration requirements for education financing providers expire under the CCFPL. Financial Code section 90009.5 provides that these regulations shall become inoperative in four years from the initial year of required registration unless the Legislature takes action to extend

⁹³ See OP 7715 (finding that Apple could lend to "government agencies and authorities" without being "engaged in the business" of a finance lender because the borrowers "do not need the protections of the CFL" and borrowers could effectively "exercise oversight" over Apple's activities); see also Commissioner's Release 60-FS (finding that public utilities are not "engaged in the business" under the CFL when making commercial loans under some financing programs).

⁹⁴ *Id.*

the registration. The purpose of this section is to ensure that CCFPL-registered education financing providers are subject to appropriate supervision required under the CFL if they are no longer required to be registered under the CCFPL. Section 1462.5 is necessary to ensure that previously-registered education financing providers do not mistakenly rely upon the exemption in subdivision (a) of this section after their respective registration requirements expire.

Section 1463. Loans to be Collected in a Single Periodic Payment.

Section 1463 interprets Financial Code section 22307, subdivision (b), as not applying to loans collected in a single periodic payment. Financial Code section 22307, subdivision (b), states that a CFL loan shall “provide for payment of the aggregate amount contracted to be paid in substantially equal periodical installments, the first of which shall be due not less than 15 days nor more than one month and 15 days from the date the loan is made.” No section of the CFL explicitly prohibits loans repaid in a single payment. Section 22307, subdivision (b), refers to contracts with “periodical installments,” which the DFPI interprets to apply only to transactions with multiple periodic payments and not to transactions collected in a single periodic payment. The purpose of section 1463 is to foster competition among finance lenders, to ensure an adequate supply of credit to borrowers in this state, and to simplify, clarify, and modernize the law governing loans made by finance lenders.⁹⁵

It is the DFPI’s understanding that some income-based advanced providers have read section 22307 as prohibiting them from collecting an advance on a borrower’s payday, because subdivision (b) provides that the first payment may not be due less than 15 days after the loan is made. Under this interpretation, an employer-affiliated income-based advance provider would have to delay receipt of repayments from employers for 15 days even if an employee’s payday occurs before that date. This logistical obstacle provides no benefit to the consumer because the employer would still withhold the advanced funds from the consumer’s paycheck. Direct-to-consumer income-based advance providers who collect from a consumer’s bank account on payday would also have to wait a full 15 days to collect rather than collecting when a consumer’s paycheck is deposited in their account. Requiring a provider to wait a full 15 days could increase the chances of an overdraft on the consumer’s account and prevents the provider from timely collecting the amount advanced. Section 1463 is necessary to address these problems by clarifying that the prohibition in subdivision (b) of Financial Code section 22307 against collecting the first payment less than 15 days from the origination of the transaction does not apply to single payment transactions like those described above.

Section 1464. Subscription Fees.

Section 1464 clarifies when a subscription fee in connection with an income-based advance program is not a charge under Financial Code section 22202, subdivision (f), and when the fee is permitted under section 22154. Financial Code section 22202 excludes from the CFL’s definition of charge payments received by a licensee for the sale of goods, services or insurance, whether or not the sale is in connection with a loan, that the buyer by a separate signed authorization acknowledges is optional, if the sale of goods, services, or insurance has been authorized pursuant to section 22154. Section 22154 authorizes licensees to conduct business other than

⁹⁵ See Fin. Code, § 22001, subd. (a).

their CFL business only when “authorized in writing by the Commissioner upon the Commissioner’s finding that the character of the other business is such that granting the authority “would not facilitate evasions” of the CFL. Although the Commissioner may still use her powers under those sections to authorize collection of other fees (including other subscription fees) when doing so does not facilitate CFL evasions, the purpose of proposed section 1464 is to clarify and modernize the law to permit certain subscription-based models that comply with the requirements of Financial Code sections 22202 and 22154. Although Financial Code section 22154 provides a mechanism for the Commissioner to authorize other charges on a case-by-case basis, section 1464 may be used by any CFL licensee who meets its requirements. Section 1464 is necessary to foster competition among finance lenders, clarify and modernize the law governing loans made by finance lenders, protect borrowers, prevent evasions of the CFL, and ensure that income-based providers have regulatory certainty to collect subscription fees if they so choose to do so. (See Fin. Code, §§ 22001, 22154.) Section 1464 is necessary because subscription-based income-based advance providers would otherwise face legal uncertainty as to whether subscription fees are permitted under the CFL. This is because Financial Code section 22300 prohibits a licensee from collecting a charge “unless a loan is made,” which is problematic for subscription-based income-based advance models where consumers pay subscription fees in months when they do not request loans. Section 1464 is necessary to foster competition by ensuring that income-based advance models that require subscription fees can compete with other income-based advance models while still complying with the CFL.

Section 1464, subdivision (a), provides that a monthly subscription fee for an income-based advance program is not a charge under the CFL if the licensee complies with subdivision (a)(1) through (6), as more fully set forth below.

Section 1464, subdivision (a)(1), provides that a monthly subscription fee is authorized if “the monthly subscription fee does not exceed \$12 per month.” This does not mean that a product with a higher subscription fee is not excluded from the definition of a charge under Financial Code section 22202, subdivision (f), if the licensee accepting that charge complies with subdivision (f) and Financial Code section 22154. The purpose of the \$12 subscription fee limitation is to prevent evasions of the CFL’s rate limitations. This limitation is necessary because permitting higher subscription fees would increase financial incentives for providers to craft subscription products that comply with Section 1464 but nonetheless operate to evade the CFL’s rate limitations.

Section 1464, subdivision (a)(2), requires that the income-based advance program allow the borrower to access other products or services other than income-based advances without additional charge. This subdivision’s purpose is to comply with Financial Code sections 22202 and 22154, which only allow the Commissioner to authorize additional fees in connection with the sale of other goods, services or insurance. This subdivision is necessary to ensure that the requirements for subscription fees is consistent with the restrictions on fees and other business activity in the Financial Code.

Section 1464, subdivision (a)(3), requires that payment of the subscription fee and the amount of the fee charged does not affect the terms upon which income-based advances are made to the borrower. This subdivision’s purpose is to prevent evasions of the CFL. This subdivision is necessary to prevent arrangements where a subscription fee’s true purpose is to collect loan

charges from consumers that would otherwise exceed the CFL's rate limitations. For example, without this subdivision, a licensee could offer \$100 advances to non-subscribers and \$200 advances to consumers who pay a \$9 per month subscription fee. In this context, it is reasonable to conclude that the \$9 subscription payment received in connection with a \$200 advance is a charge in connection with the additional \$100 that the licensee agrees to lend the consumer, and not a payment for other services.⁹⁶

Section 1464, subdivision (a)(4), requires borrowers to be able to cancel their monthly subscription without penalty at any time. This subdivision's purpose is to prevent evasions of the CFL and protect borrowers. This subdivision is necessary to prevent consumers from incurring ongoing financial obligations that commit them to paying for financial products that they no longer need. Furthermore, without this subdivision, a provider could subvert the CFL's rate protections by requiring a consumer to make additional subscription payments even after the consumer no longer intends to use the service, so that the provider can recoup the costs of advances previously provided.

Section 1464, subdivision (a)(5), prohibits the subscription fee from being a prerequisite to receiving income-based advances from the licensee, and requires the licensee to obtain the borrower's signed authorization acknowledging that the service is optional as required by Financial Code section 22202, subdivision (f). This subdivision's purpose is to conform the section's exclusion of certain subscription payments from the CFL's definition of charge to Financial Code section 22202's requirements that providers receive a signed acknowledgment from the consumer demonstrating they understand that the charges are not required. This subdivision is necessary to ensure consistency with the Financial Code, and, because, absent the explicit reference to Financial Code section 22202, subdivision (f), a provider might assume that the DFPI's regulation renders the statutorily required authorization unnecessary.

Section 1464, subdivision (a)(5), also allows the licensee to obtain the borrower's authorization required by Financial Code section 22202, subdivision (f), electronically. This subdivision's purpose is to clarify and modernize the law governing loans made by finance lenders. This provision is necessary to provide regulatory certainty to income-based advance providers that they may obtain the borrower's authorization electronically.

Section 1464, subdivision (a)(6), requires licensees to credit subscription fees paid each month to administrative fees first and then to any other permitted charges collected from the borrower in connection with income-based advances made to the borrower during that month. This subdivision's purpose is to prevent evasions of the CFL and protect borrowers. When a subscription service incorporates the right to receive income-based advances and other products or services, it may be difficult to assess whether consumers pay subscription fees solely or primarily to receive income-based advances or whether they value the other products or services that are part of the subscription service. If a consumer receives income-based advances in a month that they have paid a subscription fee, it is appropriate to credit that subscription fee to any CFL-permitted charges (e.g., interest and administrative fees authorized under the CFL) collected during that month. In this circumstance, it is consistent with the CFL's consumer

⁹⁶ See Fin. Code, §§ 22200 (defining charges as including "costs charged... in connection with" making a loan), 22202 (excluding from the definition of charge certain payments made to purchase other services).

protection purposes to infer that the consumer has paid the subscription fee to receive the income-based advances, and to limit the total permitted CFL charges paid by the consumer based upon a calculation that includes the payment of the subscription fee. This section is necessary because, without it, a provider could use a subscription fee to collect charges exceeding the CFL's rate limits. For example, a provider could collect such additional fees in connection with a subscription service where the other products or services that are provided are not used or valued by consumers.

Section 1464, subdivision (b)(1) through (3), defines an “income based advance program” to mean any agreement that includes the right, whether or not contingent, to receive income-based advances from the licensee; “monthly subscription fee” as any monthly fee paid by a borrower under an income-based advance program; and “income-based advance” as that term is defined under the CCFPL registration regulations in section 1004, subdivision (g), of these proposed rules. The purpose of this subdivision is to provide clarity and guidance on the meaning of these terms used under the CFL regulations. The definitions are necessary because they clarify the meaning of terms and phrases used in the section to ensure they are understood consistently. The definitions also make the regulations more readable and easier for the public to understand.

Section 1465. Voluntary or Optional Charges.

Section 1465 provides that voluntary or optional payments, including tips or gratuities, paid in connection with a loan are charges under Financial Code section 22200. This section's purpose is to clarify the types of consumer payments that constitute charges under Financial Code section 22200. This provision is necessary to ensure that lenders recognize that the provision in Financial Code section 22200 providing that “charges” include other forms of costs “received by” a licensee include voluntary or optional payments such as tips and gratuities.

Treating tips as charges under the CFL is supported by the CFL's plain language and underlying consumer protection purposes. The CFL defines charges expansively to include the:

“aggregate interest, fees, bonuses, commissions, brokerage, discounts, expenses, and other forms of costs charged, contracted for, *or received by* a licensee or any other person in connection with the investigating, arranging, negotiating, procuring, guaranteeing, making, servicing, collecting, and enforcing of a loan or forbearance of money, credit, goods, or things in action, or any other service rendered.”⁹⁷

In statutory interpretation, the “analysis starts by examining the actual words of the statute.”⁹⁸ Courts also do not “construe statutory provisions so as to render them superfluous.”⁹⁹ In addition, “use of the word ‘or’ in a statute indicates an intention... to designate alternative or separate categories.”¹⁰⁰

⁹⁷ Fin. Code, § 22200 (emphasis added).

⁹⁸ *Coburn v. Sievert* (2005) 133 Cal.App.4th 1483, 1494; See also *Robertson v. Health Net of California, Inc.* (2005) 132 Cal.App.4th 1419, 1425.

⁹⁹ *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 22; see also *People v. Craft* (1986) 41 Cal.3d 554, 560.

¹⁰⁰ *White v. County of Sacramento* (1982) 31 Cal.3d 676, 680.

Applying these principles of statutory interpretation demonstrates that tips are “charges” under the CFL’s plain language. The CFL defines charges as including “bonuses,” “expenses,” or “costs... received by a licensee or any other person” in connection with making a loan.¹⁰¹ A consumer’s payments, whether or not voluntary, are “bonuses,” “expenses,” or “costs” for the consumer that are “received by” the licensee.¹⁰² This interpretation flows directly from the CFL’s words.¹⁰³ Furthermore, interpreting the CFL’s definition to only include fees that are “contracted for” between the lender and borrower would impermissibly render other language in the definition, i.e., “received by” the licensee, superfluous¹⁰⁴ and would violate the principle that the word “or” indicates an intention “to designate alternative or separate categories.”¹⁰⁵ If the Legislature had intended for charges to include only fees charged, contracted for, “and” received by the licensee, it would have used “and” instead of “or”, but it did not.

Interpreting tips as charges under the CFL is consistent with the law’s underlying purposes. In Financial Code section 22001, the Legislature mandated that the CFL be “liberally construed and applied to promote its underlying purposes and policies,” which includes, among other things, protecting “borrowers against unfair practices by some lenders, having due regard for the interests of legitimate and scrupulous lenders.”¹⁰⁶ This policy favors a broad interpretation of the CFL’s definition of charge to include optional payments like tips. By contrast, interpreting charges as excluding tips would undermine one of the CFL’s core consumer protections—rate caps that limit how much consumers pay in connection with their loans.¹⁰⁷

Excluding tips from the CFL’s definition of charge also conflicts with other provisions in the CFL that specify the discretionary fees that are excluded from charges. Tips and gratuities are not included among these fees. The CFL expressly excludes certain costs and fees from the definition of “charges”, which means a licensee may pass these costs on to borrowers without regard to the CFL’s limitation on charges. These costs include insurance agent commissions, court costs, seller’s fees (limited to 6%), repossession fees (up to \$500), and money paid for the sale of goods, services, and insurance. Tips and gratuities are not included in these costs.

Policy considerations, including consumer protection, support treating tips as charges under the CFL because policing tipping practices to ensure they are wholly voluntary would be particularly challenging. Even though tip-based financing is a young market, the DFPI has already identified multiple strategies that lenders use to make tips almost as certain as required fees and these charges can be quite costly. These approaches include:

- 1) Disabling a service if a borrower does not tip;
- 2) Setting default tips and using other user interface elements to making tipping hard to avoid;

¹⁰¹ Fin. Code § 22200.

¹⁰² *Id.*

¹⁰³ See *Coburn v. Sievert* (2005) 133 Cal.App.4th 1483, 1494.

¹⁰⁴ See Fin. Code § 22200, *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 22.

¹⁰⁵ *White v. County of Sacramento* (1982) 31 Cal.3d 676, 680.

¹⁰⁶ Cal. Fin. Code § 22001(a)(4) (emphasis added); see also *De La Torre v. CashCall, Inc.*, 5 Cal. 5th at 992 (the purpose of the CFL is to protect consumers); *BBB Bonding Corp. v. Caldwell*, 73 Cal. App. 5th 349, 365 (2021) (consumer protection statutes must be liberally construed to accomplish their remedial purpose).

¹⁰⁷ See e.g. Fin. Code §§ 22303, 22304.5.

- 3) Making it difficult to set a \$0 tip or not advertising that a particular payment is optional; and
- 4) Claiming that tips are used to help other vulnerable consumers or for charitable contributions.

Treating tips as charges under the CFL would reduce the financial incentive for lenders and income-based advance providers to use these and other schemes to obtain tips.

The DFPI found that of the transactions originated in 2021 by companies that accept tips, tips were included in 73% of the over 5.8 million advances made to California consumers, and the APRs for these advances ranged between 328% and 348%.¹⁰⁸ The APRs for advances from companies that do not accept tips were similar, ranging from between 315% and 344%. The APRs for companies that accept tips and those that do not are generally similar to the average APRs for licensed payday lenders in California.¹⁰⁹ By treating tips as charges under the CFL, the DFPI will ensure that providers who rely upon tips and those that rely upon other charges compete on a level playing field.

Section 1466. Loans with Income-Based Repayment Options; Education Financing.

Section 1466, subdivision (a), provides that a loan that gives the borrower the option of making payments based on a fixed percentage of the borrower's income complies with the requirement in Financial Code section 22307, subdivision (b), which requires that the loan must be "contracted to be paid in substantially equal periodical installments", if the loan also gives the borrower the option of making substantially equal periodic payments. Subdivision (a) also clarifies that a payment based upon a percentage of a borrower's income will not be considered a balloon payment under California Code of Regulations, title 10, section 1453. Section 1453 prohibits payments that are more than twice the amount of any other scheduled installment as a violation of Section 22307 of the Financial Code. Some education financing products offer consumers the option of making payments that are a percentage of their income. This proposed regulation is necessary to ensure that providing borrowers the option to adopt a payment schedule based on a fixed percentage of the borrower's income does not violate the Financial Code, provided that the borrower also has the option to make equal periodic loan payments. Without this proposed rule, financing providers under the CFL would be unable to offer a loan feature that may assist some consumers in managing their payments.

Section 1466, subdivision (b), clarifies Financial Code section 22307, subdivision (b), which requires that the first payment on a loan must be due not "more than one month and 15 days from the date the loan is made." Proposed Section 1446, subdivision (b), provides that a loan contract does not violate Financial Code 22307, subdivision (b), if the contract does not require the borrower to make payments during periods that are commonly referred to as education forbearances, provided that the loan contract does not accrue charges during the period during which the borrower is not required to make payments. The purpose of this regulation is to allow education financing providers to offer standard consumer-friendly education forbearances

¹⁰⁸ DFPI, 2021 Earned Wage Access Data Findings, March 2023.

¹⁰⁹ DFPI, 2021 Annual Report of Payday Lending Activity under the California Deferred Deposit Transaction Law, page 7.

provided that those forbearances do not result in costs accruing to a consumer. The proposed regulation is necessary to prevent education financing providers from requiring borrowers to make payments when they are in the process obtaining an education or seeking post-education employment.

Subchapter 13. Deferred Deposit Transaction Law.

Article 3. Reports to the Commissioner

Section 2030.5. California Consumer Financial Protection Law Registration Exemption: Reporting.

Section 2030.5 clarifies the registration exemption set forth by Financial Code section 90009, subdivision (a)(2)(A), for CDDTL licensees when offering or providing income-based advances by defining what it means to offer those products “within the scope of” a CDDTL license. This section is necessary to clarify the statutory exemption to avoid confusion concerning when a product is offered or provided “within the scope of” a CDDTL license. To be “within the scope of” a CDDTL license, a licensee must meet three requirements set forth in proposed subdivisions (a)(1) through (3).

Section 2030.5, subdivision (a)(1) through (3), provides that “within the scope of its license” means offered and provided in a manner that complies with the CDDTL’s requirements for deferred deposit transactions and pursuant to the authority conferred by a CDDTL license and reported as CDDTL activity in a CDDTL licensee’s annual report. The purpose of the requirements in subdivision (a)(1) through (3) is to prevent businesses from using a CDDTL license to evade the CCFPL’s registration requirements, and to ensure that the DFPI is capturing complete information on income-based advances that are being made to California residents. Subdivision (a)(1) and (2) is necessary to ensure that the protections of the CDDTL apply to income-based advances made under that law. Subdivision (a)(3) is necessary to clarify the DFPI’s examination authority under the CDDTL and prevent businesses from evading oversight under CCFPL registration and the CDDTL by applying for a CDDTL license and then claiming that the licensee is only originating income-based advances that are not subject to the CDDTL.

Section 2030.5, subdivision (b), requires CDDTL licensees who are exempt from CCFPL registration to submit an annual report that includes the same information on income-based advances made under the CDDTL license that registrants under the CCFPL must report to the DFPI. The purpose of this requirement is to ensure the DFPI has a complete picture of the markets for income-based advance products. This requirement is necessary because the reporting requirements for income-based advance products in the proposed registration regulations are not part of the CDDTL’s annual reporting requirements.

Subchapter 15. Student Loan Servicing Act

Article 6. Examinations, Books and Records

Section 2044.1. California Consumer Financial Protection Law Registration Exemption: Notice; Reporting.

Section 2044.1 exempts SLSA licensees from registration requirements when offering or providing education financing to be serviced by the licensee after origination if the licensee meets the notice and reporting requirements in subdivisions (a) and (b). This purpose of this section is to ensure that the DFPI is capturing complete information on education financing to California residents while reducing administrative obligations for SLSA licensees who might otherwise be required to register with the DFPI. This section is necessary to promote efficiency by clarifying when an SLSA licensee is exempt from registration, prevent SLSA licensees from incurring unnecessary costs when they do not need to register under the CCFPL, clarify the DFPI's examination authority under the SLSA, and prevent businesses from evading oversight under the CCFPL by applying for a SLSA license and claiming that the licensee is only originating education financing and not SLSA activities under the license.

Section 2044.1, subdivision (a)(1)(A) and (B) requires SLSA licensees to notify the Commissioner if the licensee is offering or intends to offer education financing to California residents. The purpose of subdivision (a)(1)(A) and (B) is to ensure the DFPI knows which licensees are providing education financing to residents under the SLSA license. Subdivision (a)(1)(A) and (B) is necessary to promote efficient administration of the SLSA and oversee education financing being offered to California residents by licensees under SLSA licenses.

Section 2044.1, subdivision (b)(1) through (5), requires SLSA licensees to submit to the DFPI by March 15 of each year a special report on education financing provided to California residents under the SLSA license and specifies the information that must be included in the report. The information required in subdivision (b)(1) through (5) is the same information in section 1044 of these proposed regulations that registrants under the CCFPL must report on education financing to the DFPI. The purpose of these reporting requirements is to ensure the DFPI has a complete picture of the markets for education financing products. These requirements are necessary because the reporting requirements for education financing products in proposed section 1044 are not part of the SLSA's general annual reporting requirements. The purpose for requiring the information in subdivisions (b)(1) through (5) is discussed above under section 1044.

Section 2044.1, subdivision (c), provides that in response to Public Records Act requests, special reports submitted pursuant to subdivision (b) of this section shall be kept confidential pursuant to Government Code section 7929.000, subdivisions (b) and (d). Government Code section 7929.000, subdivisions (b) and (d), allows the DFPI to withhold from public inspection operating and condition reports filed with the DFPI and information received in confidence by the DFPI. The purpose of this subdivision is to protect the special reports from public disclosure. Although annual reports submitted under the SLSA are public records, the DFPI determined in the case of special reports to extend the protections of Government Code section 7929.000 to them. This is necessary because the information in the reports is likely treated as confidential by the licensees and registration is subject to sunset review after four years. During the sunset review period, the Legislature may make determinations concerning future public access to annual reports for registrants if the Legislature elects to extend a registration regime or enact a substitute licensing regime. The DFPI may reconsider whether future special reports submitted pursuant to this section should be subject to public inspection at that time. Limiting the applicability of the subdivision to Public Records Act requests ensures the DFPI's ability to fulfill its statutory powers and responsibilities, which include improving accountability and transparency in the California financial system (Fin. Code § 90000, subd. (a)(4)), making public

policy recommendations (Fin. Code § 90018, subd. (c)), reporting to the California legislature (Fin. Code § 90009.5, subd. (d)(2)), and issuing publications and reports to effectuate the CCFPL's purposes. (Fin. Code § 90006, subd. (a)(2).)