



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

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

NOTICE OF PROPOSED RULEMAKING
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

TITLE 10. CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND
INNOVATION

The Department of Financial Protection and Innovation (“Department”) proposes to adopt the following sections to Title 10, Chapter 3, of the California Code of Regulations:

- Sections 1000, 1001, 1002, 1003, 1004, 1010, 1011, 1012, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1030, 1031, 1032, 1033, and 1034 to Article 1, Sections 1040, 1041, 1042, 1043, 1044, and 1045 to Article 2, and Sections 1048, 1050, 1051, and 1052 to Article 3 of Subchapter 4;
- Section 1430.1 to Article 3, and Sections 1461, 1462, 1462.5, 1463, 1464, 1465, and 1466 to Article 4 of Subchapter 6;
- Section 2030.5 to Article 3 of Subchapter 13; and
- Section 2044.1 to Article 6 of Subchapter 15.

The proposed regulations implement, interpret, and make specific the registration requirements for covered persons under Financial Code section 90009 of the California Consumer Financial Protection Law (CCFPL)¹ and the requirements for exemption from registration under the CCFPL for licensees under the California Financing Law (CFL), California Deferred Deposit Transaction Law (CDDTL), and Student Loan Servicing Act (SLSA), and clarify the regulation of advances pursuant to Financial Code section 22150 of the CFL² administered by the Department.

AUTHORITY

Financial Code sections 22150, 22154, 22159, 23015, 23026, 28106, 28146, 90007, 90009, and 90010; and Government Code section 7929.000.

¹ Fin. Code, § 90000 et seq.

² Fin. Code, § 22000 et seq.

REFERENCE

Financial Code sections 22100, 22154, 22159, 22200, 22203, 22307, 22335, 23026, 28146, 90003, 90005, 90006, 90007, 90009, 90009.5, 90010, 90015, 90018; and Government Code section 7929.000.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action but will hold one if any interested person or authorized representative makes a written request for a hearing to the Department's designated contact person below, no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

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

By Postal Mail

Department of Financial Protection and Innovation
Attn: Araceli Dyson
2101 Arena Boulevard
Sacramento, California 95834

By Electronic Mail

Comments may be submitted electronically to regulations@dfpi.ca.gov with a copy to Peggy.Fairman@dpfi.ca.gov. Please identify the comments as PRO 01-21 in the subject line.

Written comments must be submitted by **May 2, 2023**.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

On September 25, 2020, Governor Newsom signed Assembly 1864³ establishing the CCFPL,⁴ which enhanced the Department's oversight authority to cover business activity that was previously unregulated,⁵ including, but not limited to, debt collection, debt settlement, credit repair, check cashing, rent-to-own contracts, retail sales financing, consumer credit reporting, and lead generation.⁶ Among other things, the Legislature intended for the CCFPL to protect

³ Stats. 2020, ch. 157 (Assem. Bill No. 1864), § 7, eff. Jan. 1, 2021.

⁴ Fin. Code, § 90000 et seq.

⁵ This is a summary of the state-of-affairs before the CCFPL's enactment. It is not intended to represent a determination of law that the listed activities, or others covered by the CCFPL, are not subject to other laws under the Department's jurisdiction.

⁶ Sen. Banking and Financial Institutions Com., Rep. on Assem. Bill No. 1864 (2019-2020 Reg. Sess.) as amended Aug. 25, 2020, p. 4.

consumers from discrimination and unfair, unlawful, deceptive, and abusive acts and practices by covered persons in connection with financial products and services.⁷

The CCFPL empowers the Department to require registration of covered persons engaged in the business of offering and providing a consumer financial product or service, but it does not specify requirements for registration. Financial Code section 90009 of the CCFPL leaves it to the Department to prescribe rules regarding these requirements. The proposed regulations would clarify and make specific the registration of covered persons, including specifying the persons who are subject to regulation under the CCFPL, establishing the registration application and application process, and specifying the application fee and annual renewal fee.

Financial Code section 90009, subdivision (a)(2)(A), of the CCFPL exempts from registration certain covered persons who provide consumer financial products or services within the scope of their licenses issued under other Department laws. The code section, however, does not specify who is exempt from registration. The proposed regulations would specify the persons who are exempt and the conditions for exemption.

Financial Code section 90009, subdivision (f)(2), of the CCFPL provides that the Department may require registrants to file annual reports to enable the Department to fulfill its responsibilities to monitor, assess, and report on the activities of registrants. The code section does not specify the requirements and leaves it to the Department's discretion to prescribe the form of the report and other reporting requirements. The proposed regulations would establish annual reporting requirements and the process for filing annual reports with the Department, including the reporting period, and specify the information that registrants must provide in the reports.

Financial Code section 90007, subdivision (b), of the CCFPL provides that the Department may charge registrants an annual registration fee for the reasonable costs of the registration program, which may be based on the size or market participation of the registrant. The code section, however, does not specify the amount of the fee, the process for paying the fee, or other requirements. The proposed regulations would establish the annual assessment fee and specify the requirements for paying the assessment to the Department.

Financial Code section 22150 authorizes the Commissioner to make rules and regulations to enforce the CFL. The proposed regulations would clarify certain provisions of the CFL relating to advances to be repaid from a consumer's future earned or unearned pay.

Anticipated Benefits of the Proposed Regulations

This regulatory action implements the Legislature's broad intent in enacting the CCFPL: to strengthen consumer protections by expanding the ability of the Department to improve accountability and transparency of financial products and services and protect consumers from unfair, unlawful, deceptive, or abusive financial practices, while prioritizing the prevention of unethical businesses from harming the most vulnerable populations.⁸ The specific benefits

⁷ Fin. Code, § 90000, subd. (b)(3).

⁸ Fin. Code, § 90000, subd. (a)(4).

anticipated from the proposed regulations are increased protection of consumers, particularly vulnerable consumers, from unfair or illegal business practices by requiring persons who provide debt settlement, student debt relief, education financing, and income-based advances products and services to register and report on their business practices, the products and services they are providing to consumers, where they are operating, and how they are providing the products and services to consumers, and by limiting higher costs to consumers who take out income-based advances.

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

Existing law authorizes the Department to prescribe the registration requirements for covered persons engaged in the business of offering or providing a consumer financial product or service.⁹ This proposed regulatory action implements the statutory requirements by:

- Defining the terms used in the proposed rules;
- Identifying the persons who must register under the proposed rules as persons who provide the following products and services: debt settlement, student debt relief, education financing, and income-based advances;
- Requiring separate registration for each subject product offered or provided by an applicant;
- Clarifying the prohibitions against making false or misleading statements in an application or annual report and making any representation that a registrant's practices or business has been approved by the Department;
- Establishing the process for registering with the Department, including the application form and the information that must be submitted as part of the application, requiring the application to be submitted to the Department through the Nationwide Multistate Licensing System and Registry ("NMLS"), and requiring registrants to pay an application fee of \$350;
- Establishing the processes, including time frames, for approving registrations and the abandonment of registrations;
- Establishing the process for registrants to report changes to the application information to the Department and the time frames for reporting the information;
- Requiring registrants to establish a designated email address to enable the Department to send notices and other communications to registrants;
- Providing that the applications and annual reports are not subject to public disclosure; and
- Establishing the requirements for revoking and surrendering registrations.

Existing law exempts from CCFPL registration certain licensees who provide consumer financial products or services "within the scope of" their licenses issued under other Department laws.¹⁰ This proposed regulatory action clarifies the meaning of "within the scope of" and specifies that licensees under the CFL and the CDDTL are exempt from registering under the CCFPL and

⁹ Fin. Code, § 90009, subd. (a)(1).

¹⁰ Fin. Code, § 90009, subd. (a)(2)(A).

requires exempt licensees who provide products or services that would otherwise be subject to registration under the CCFPL to submit supplemental information on these activities in their annual reports required under their license.

Although an SLSA license does not confer upon a licensee the authority to originate financing within the scope of their license, the regulations exempt SLSA licensees from registration requirements for education financing when they meet specified requirements.

Existing law authorizes the Department to require reports from registrants to obtain information about their activities and to detect and assess risks to consumers and markets.¹¹ This proposed regulatory action requires each registrant to submit annual reports to the Department by March 15 of each year, beginning March 15, 2025, and specifies the information that must be included in the annual report, provides that the Department may summarily revoke a registration for failing to file an annual report, and permits a registrant whose registration is revoked to reinstate their registration by submitting a written request and paying an administrative fine, and establishes the time frames for submitting written requests and the amount of the administrative fines.

Existing law authorizes the Department to set and collect an annual registration fee from each registrant.¹² This proposed regulatory action establishes the amount of the annual assessment and sets forth the process and time frames for paying the assessment to the Department with the first assessment payment due by December 31, 2024, provides that the Department may by order summarily revoke a registration for failure to payment the annual assessment, and permits a registrant whose registration is revoked to reinstate their registration by submitting a written request and paying an administrative fine, and establishes the time frames for submitting written requests and the amount of the administrative fines.

Existing Law authorizes the Department to promulgate rules under the CFL.¹³ This proposed regulatory action clarifies the applicability of the CFL to certain activities by:

- Clarifying that an advance of funds to be repaid from a consumer's future earned or unearned pay is a loan subject to the CFL;
- Exempting from licensure under the CFL providers of income-based advances and education financing who are registered under the CCFPL and whose charges do not exceed the charges permitted under the CFL;
- Clarifying that the prohibition on collecting loan payments within 15 days of the date of originating the loan does not apply to loans that are collected in a single payment;
- Clarifying that monthly subscription fees are not charges under the CFL if the fees meet certain consumer protection requirements;
- Clarifying that tips or other voluntary payments are charges under the CFL; and

¹¹ Fin. Code, § 90009, subd. (f)(2).

¹² Fin. Code, § 90007, subd. (b).

¹³ Fin. Code, § 22150.

- Clarifying that a loan contract complies with the CFL's requirement of equal periodic payments if the contract provides the borrower with the option of making payments based on a fixed percentage of the borrower's income or making equal periodic payments; and
- Clarifying that a contract complies with the CFL's requirement that the first loan payment be within one month and 15 days from the date the loan is made if the loan contract does not accrue charges during the period of forbearance.

Existing Federal Regulation or Statute

There are no comparable federal registration or annual information reporting requirements. The proposed regulatory action is not inconsistent with existing federal statutes and regulations.

Determination Concerning Inconsistency/Incompatibility with Existing State Regulations

The Department evaluated the proposed regulations for consistency and compatibility with existing state regulations and has concluded that these are the only regulations pertaining to registration and regulation of covered persons under the CCFPL or the regulation of advances to be repaid from a consumer's earned or unearned pay under the CFL. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Forms Incorporated by Reference

This proposed regulatory action incorporates the following forms by reference: NMLS Company Form, Version 11.0, dated 09/12/15; and NMLS Individual Form, Version 9, dated 9/12/2016.

The Department has determined that it would be cumbersome, burdensome, and impractical to publish the NMLS forms in the California Code of Regulations because the forms are lengthy with specific formatting requirements. The forms are uniform for every Department law that requires the use of NMLS and therefore it would be impractical and unduly expensive to include the same uniform forms within each law's regulations. The application forms are the basis for an interactive electronic filing of the information contained in the forms and publishing the forms in the California Code of Regulations may confuse an applicant or registrant and result in the applicant or registrant attempting to file the form rather than submitting the information electronically. Further, NMLS provides extensive information to applicants and registrants on how to navigate the NMLS system and file or upload the requested information and publishing the forms may confuse an applicant or registrant seeking information on how to submit the information. The forms are readily available to the public through the NMLS website. Live links to the forms are provided on the Department's website and both the Department and NMLS maintain call centers to assist applicants and registrants in accessing the uniform forms. Applicants who operate financial services businesses in other states are likely already familiar with the NMLS forms because many states require registration or licensure of financial services providers through NMLS.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Cost or savings to any state agency: Costs to implement the proposed regulations are absorbable within existing resources. Ongoing costs are estimated to be \$9,032,644 and are recoverable via registration and annual assessment fees.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Effect on housing costs: No significant effect.

ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has made an initial determination this proposed regulatory action will not have a significant, statewide, adverse, economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESS

This regulatory action may impact small business.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

Applicants will likely incur initial costs estimated at \$5,790 to register with the Department. The initial costs include a \$350 Department application fee and estimated costs of \$1,680 to prepare the application and \$3,760 to develop an annual reporting system. The costs to complete and file an application are anticipated to be reasonable for applicants because the Department is not requiring applicants to provide fingerprints of their key personnel, submit to criminal background investigations, or register their branch offices. Costs may be less for those applicants who are registered or licensed with other states through NMLS because they are already familiar with the NMLS application and filing protocols.

Registrants will likely incur annual estimated costs of approximately \$12,944 to comply with the requirements to maintain a registration. Annual costs include a \$100 annual fee to renew the registration through NMLS and estimated costs of \$544 to prepare and file the annual report with the Department and to report changes to the information in the registrant's application to the Department, if any, and the annual assessment, which is set at a minimum amount of \$500 each year. The Department estimates that the amount of the annual assessment is \$12,300, based on 385 registrants and assuming the same gross income for all registrants. The actual amount of the annual assessment for each registrant, however, will depend on the number of registrants, the Department's costs of administering the registration program for the year, and the registrant's gross income for the year. There is no fee for filing an annual report or reporting changes to the application information.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The Department has determined:

- The proposed action is unlikely to create or eliminate jobs within California;
- The proposed action is unlikely to create new businesses or eliminate existing businesses within California;
- The proposed action is unlikely to affect the expansion of businesses currently doing business within California;
- The proposed action may benefit the health and welfare of California residents by improving accountability and transparency of financial products and services and protecting consumers from abusive business practices and high cost products; and
- No benefits or adverse impacts to worker safety or to the state's environment are anticipated from this regulatory action.

BUSINESS REPORTING REQUIREMENT

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

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

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

AVAILABILITY OF THE DOCUMENTS ON THE INTERNET

The notice, initial statement of reasons, and proposed text are also available on the Department's website at www.dfpi.ca.gov. To access the documents from the Department's website, click on "Laws and Regulations" under the "Licensees" tab at the top of the home page, then on the

“Regulations / Rulemaking” link, and then on the “California Consumer Financial Protection Law” link.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if scheduled, and considering all timely and relevant comments, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days prior to adopting the revised regulations. Requests for a copy of any modified regulation(s) must be addressed to the contact persons named in this notice. The Department will accept written comments on the modified regulations for at least 15 days after the date they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

CONTACT PERSONS

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

Araceli Dyson
Department of Financial Protection and Innovation
2101 Arena Boulevard
Sacramento, California 95834
Telephone: (916) 576-8620
e-mail: regulations@dfpi.ca.gov

The backup contact person for these inquiries is:

Peggy Fairman
Department of Financial Protection and Innovation
2101 Arena Boulevard
Sacramento, California 95834
Telephone: (916) 576-4959
e-mail: Peggy.Fairman@dfpi.ca.gov

Dated: March 7, 2023 Sacramento, California