



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

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

IN REPLY REFER TO
FILE NO: PRO 02-23

November 20, 2023

**INVITATION FOR COMMENTS ON PROPOSED APPLICATION-RELATED RULEMAKING
UNDER THE DIGITAL FINANCIAL ASSETS LAW (PRO 02-23)**

BACKGROUND

On Friday, October 13, 2023, Governor Gavin Newsom [signed Assembly Bill 39](#) and [Senate Bill 401](#), which together create the Digital Financial Assets Law (DFAL).

The DFAL prohibits, on or after July 1, 2025, a person from engaging in digital financial asset business activity, or holding itself out as being able to engage in digital financial asset business activity, with or on behalf of a resident, unless the person is licensed with the Department of Financial Protection and Innovation (DFPI), has submitted a license application on or before July 1, 2025 and is awaiting approval or denial of that application, or is exempt from licensure.

INVITATION FOR COMMENTS

The DFPI is considering promulgating rules to facilitate the DFAL licensure process. Prior to engaging in formal rulemaking, the DFPI seeks public comment on topics related to the DFAL license application, licensure requirements, and stablecoin approval, as listed below. Comments on additional DFAL-related topics may be submitted to the DFPI for consideration now; however, note that the DFPI anticipates soliciting comments on topics outside of this invitation for comment in the future.

For comments recommending rules, commentors are encouraged to propose specific rule language and provide an estimate, with justification, of the potential economic impact on business and individuals that would be affected by the language. To the extent possible, all comments should include any applicable information about economic impacts, metrics, or quantitative analysis to support comments.

TOPICS

License application form and related fees (Fin. Code, § 3203)

1. Financial Code section 3203, subdivision (a)(2)(X) requires the license application to include “any other information” the DFPI reasonably requires by rule. In addition to the information that is listed in the law, what other information should the application include?
2. Financial Code section 3203, subdivision (a)(3) requires the license application to be accompanied by a nonrefundable fee to cover the reasonable costs of application review. Additionally, Financial Code section 3203, subdivision (e) requires the applicant to pay the reasonable costs of the DFPI’s investigation under section 3203, subdivision (b).
 - a. Are there aspects of the costs and fees in Financial Code section 3203 that should be clarified through rulemaking?
 - b. Are there factors the DFPI should consider in determining these reasonable costs and fees? For example, should the DFPI charge every applicant the same application fee, or charge different fees depending on the type or complexity of the application? Where applicable, please provide information about the methodology and impact of costs and fees in other state or federal regulatory environments.

Surety bond or trust account (Fin. Code, § 3207, subd. (a))

3. What factors should the DFPI consider in determining the dollar amount of surety bond or trust account it may require under Financial Code section 3207, subdivision (a)?
4. Should the DFPI require a minimum amount of surety bond or trust account? Please explain.
5. Should surety bond or trust account amounts vary by the type of activity requiring licensure? Please explain.
6. How should specific activity requirements provided for in DFAL, such as the custody requirements of Financial Code section 3503 or the reserve requirements of Financial Code section 3601, impact surety bond or trust account amounts?

Capital (Fin. Code, § 3207, subd. (b) & (c))

7. Financial Code section 3207, subdivision (b) requires a licensee to maintain capital “in an amount and form as the [DFPI] determines is sufficient to ensure the financial integrity of the licensee and its ongoing operations based on an assessment of the specific risks applicable to the licensee.” It provides nine factors the DFPI may, but is not required to, consider when determining the minimum amount of capital required of a licensee. Are the factors provided in Financial Code section 3207, subdivision (b) sufficient, or are additional factors needed and if so, what should those potential additional factors be and why?

8. Should capital minimums vary by the type of activity requiring licensure?

Stablecoin approval process (Fin. Code, § 3603)

9. Under Financial Code section 3603, subdivision (b)(2)(B), in determining whether to approve a stablecoin the Commissioner must consider “[t]he amount, nature, and quality of assets owned or held by the issuer of the stablecoin that may be used to fund any redemption requests from residents.” Subdivision (a)(2) of Financial Code section 3601 requires that the “issuer of the stablecoin at all times own[] eligible securities having an aggregate market value computed in accordance with United States generally accepted accounting principles of not less than the aggregate amount of all of its outstanding stablecoins issued or sold.” Subdivision (b)(1) of Financial Code section 3601 specifies that “eligible securities” means those described in subdivision (b) of Financial Code section 2082 or foreign currency eligible securities described in subdivision (c) of section 2082.
 - a. Given that Financial Code section 3601 already restricts the types of assets that qualify as eligible securities (and can therefore be used to fund redemption requests) that an issuer may hold to those assets described in Financial Code section 2082, are there other criteria that the DFPI should consider in evaluating “quality of assets” under Financial Code section 3603, subdivision (b)(2)(B)?
 - b. Regarding the amount and nature of assets, is there particular information that the DFPI should consider?
10. Under Financial Code section 3603, subdivision (b)(2)(C), in determining whether to approve a stablecoin the Commissioner must consider “[a]ny risks related to how the assets described in subparagraph (B) are owned or held by the issuer that may impair the ability of the issuer of the stablecoin to meet any redemption requests from residents.” Are there particular risks regarding how assets are owned or held that the DFPI should consider?
11. Under Financial Code section 3603, subdivision (b)(2)(F), in determining whether to approve a stablecoin, the Commissioner must consider “any other factors the commissioner deems material to making their determination.”
 - a. To what extent should the DFPI consider the amount and type or quality of the issuer’s other liabilities before approving a stablecoin?
 - b. What “other factors” should the DFPI consider?
 - c. Should the DFPI consider whether the stablecoin is listed on the “Greenlist” maintained by the New York State Department of Financial Services? Please explain why or why not.

12. Under Financial Code section 3603, subdivision (c), the Commissioner may impose conditions, restrictions, or other requirements on an issuer or a covered person as a condition of approval of a stablecoin.
 - a. Are there restrictions or requirements that should be imposed generally on all issuers or covered persons? If so, why?
 - b. Should there be a general requirement that all issuers certify that they meet requirements similar to those for covered exchanges under Financial Code section 3505, subdivision (a)?

Additional Comments

13. Are there any additional matters related to the DFAL license application, licensure requirements, or stablecoin approval that the DFPI should consider when proposing regulations?
14. What future rulemaking actions related to the administration of the DFAL should the DFPI consider, and why?

TIME FOR COMMENTS

The Commissioner invites interested parties to submit comments by January 12, 2024.

WHERE TO SUBMIT COMMENTS

You may submit comments by any of the following means:

Electronic

Comments may be submitted electronically to regulations@dfpi.ca.gov. Please include "PRO 02-23" in the subject line. Submissions in Microsoft Word format are encouraged to facilitate public accessibility.

Mail

Department of Financial Protection and Innovation
Attn: Legal Division
2101 Arena Boulevard
Sacramento, CA 95834

INFORMAL LISTENING SESSION

On January 8, 2024, the DFPI will host a Virtual Informal Listening Session with stakeholders to discuss feedback on this informal invitation for comments. If you would like an invitation to attend, please email regulations@dfpi.ca.gov. Please include “DFAL Listening Session RSVP” in the subject line.

SUBSCRIBE FOR UPDATES

To receive future updates about DFAL rulemaking, subscribe under the “Contact Us” link at www.dfpi.ca.gov.

CONTACT PERSON

Questions regarding this invitation for comments may be directed to Mary Tomé, Senior Counsel for the Commissioner, at mary.tome@dfpi.ca.gov.