



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

GOVERNOR **Gavin Newsom** · COMMISSIONER **Manuel P. Alvarez**

RELEASE No. 61-C (Revised)

DATE: January 26, 2021

Interpretive Opinions

The purpose of this Release is to provide guidance for making a request to the Department of Financial Protection and Innovation (“Department”) for an interpretive opinion concerning the laws administered by the Department.

1. How does a public member request an interpretive opinion?

Persons requesting an interpretive opinion should:

- (1) Specifically state that the letter is a request for an interpretive opinion (if only informal guidance is desired, the request should so indicate);
- (2) Name the principal parties to the transaction;
- (3) Submit the request in writing, specify each legal question presented, and describe all relevant facts and circumstances (when appropriate, enclose relevant documents such as copies of agreements or offering materials);
- (4) Include an objective legal analysis with a reasoned conclusion for each question (based on applicable law and regulations, previous opinions, state and federal court decisions, no-action letters issued by the Securities and Exchange Commission, and other similar documents);
- (5) Make any confidentiality request in accordance with California Code of Regulations, title 10, section 250.10;¹ and

¹ Requests for interpretive opinions under laws related to banks, savings associations, credit unions, industrial loan companies, money transmitters, and other licensees, as defined in Financial Code section 185, are treated as confidential pursuant to Financial Code section 159 and Government Code section 6254, subdivision (d). Financial Code section 2174 requires the publication of the Department’s opinion letters regarding money transmitters, subject to redactions. Requests for interpretive opinions under other laws will only be granted confidential treatment if a request is made in accordance with California Code of Regulations, title 10, section 250.10.

(6) Address the request to the Commissioner in care of the Legal Division at the Department's Sacramento Office, 2101 Arena Blvd., Sacramento, CA 95834.

2. What is an interpretive opinion?

An interpretive opinion – including a determination and a specific ruling – sets forth a written answer to resolve an unsettled question of law within the scope of responsibility of the Department.

3. Who issues an interpretive opinion?

The Commissioner of Financial Protection and Innovation issues interpretive opinions, through the Department's Legal Division.

4. Why do public members request an interpretive opinion?

A member of the public named in the interpretive opinion may be protected from liability for acts or omissions done in good faith reliance upon the interpretive opinion. See Corporations Code section 25700, for example.

5. When will the Commissioner not render an interpretive opinion?

Existing law (including California Code of Regulations, title 10, section 250.12) provides the Commissioner with discretion to render interpretive opinions. Depending on the request for an interpretive opinion, the Commissioner may decline to exercise that discretion. Examples of interpretive opinion requests that may be declined by the Commissioner include the following:

- (1) the request raises an issue that may be answered by reviewing applicable law, rules of the Commissioner, previous opinions and releases, or other legal resources (public members should consult with private legal counsel to assist with an interpretive opinion request);
- (2) the request fails to specify the parties involved in the transaction;
- (3) the request fails to set forth a legal analysis applying relevant law to the facts;
- (4) the request fails to include relevant facts or documents;
- (5) the request fails to set forth a specific legal question;
- (6) the request involves primarily a question of fact;

(7) the request raises a question involving a past transaction, a violation of law, ongoing litigation or an enforcement matter;

(8) the request is from a person who cannot rely on the interpretive opinion;

(9) the request raises an issue beyond the scope of laws administered by the Department;

(10) the request involves an advisory or hypothetical opinion; or

(11) the request fails to include complete information.

References

This release supersedes Releases 4-C (Revised), 2-F (Revised), and previous versions of Release 61-C. This release provides answers to frequently asked questions concerning: interpretive opinion requests pursuant to Corporations Code section 25618 of the Corporate Securities Law of 1968, Corporations Code section 29546 of the California Commodity Law of 1990, Corporations Code section 31510 of the Franchise Investment Law, Corporations Code section 28952 of the Capital Access Company Law, Financial Code section 50312 of the California Residential Mortgage Lending Act, Financial Code section 2174 of the Money Transmission Act, and California Code of Regulations, title 10, section 5.6; determination requests under Corporations Code section 25014.6, subdivision (b)(2); and specific ruling requests under Financial Code section 12300 of the Check Sellers, Bill Payers and Proraters Law, Financial Code section 22150 of the California Financing Law, and Financial Code section 23015 of the California Deferred Deposit Transaction Law.