

NOTICE OF RULEMAKING ACTION
TITLE 10. CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT

NOTICE IS HEREBY GIVEN [Government Code Section 11346.5, Subdivision (a)(1)]

The Commissioner of Business Oversight (Commissioner) proposes to adopt regulations to implement the Pilot Program for Increased Access to Responsible Small Dollar Loans and repeal the regulations under the former pilot program, the Pilot Program for Affordable Credit-Building Opportunities, under the California Finance Lenders Law. Effective January 1, 2014, Senate Bill 318 (Chap. 467, Stats, 2013) abolishes the former pilot program and establishes the Increased Access to Responsible Small Dollar Loans pilot program in place of the abolished program. Specifically, the Commissioner proposes to amend Section 1550 of Article 10, repeal Sections 1580 through 1596 of Article 13, and adopt Sections 1600 through 1618 to Article 14, of Subchapter 6 of Title 10 of the California Code of Regulations.

On July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to form the Department of Business Oversight. The Department of Business Oversight (Department) has all of the powers, authority, enforcement, jurisdiction, laws and regulations that were under the former Department of Corporations and former Department of Financial Institutions.

AUTHORITY [Government Code Section 11346.5, Subdivision (a)(2)]

Sections 22150, Financial Code.

REFERENCE [Government Code Section 11346.5, Subdivision (a)(2)]

Sections 22014, 22107, 22150, 22157, 22161, 22162, 22163, 22164, 22165, 22166, 22347, 22349, 22349.1, 22349.2, 22351, 22352, 22354, 22355, 22356, 22356(b)(4), 22357, 22358, 22366, 22367, 22369, 22370, 22372, 22373, 22374, 22375, 22376, 22378, 22380, 22715, and 22755, Financial Code.

PUBLIC COMMENTS [Government Code Section 11346.5, Subdivision (a)(17)]

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8, subdivision (a), of the Government Code. The request for hearing must be received by the Department's contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD [Government Code Section 11346.5, Subdivision (a)(15)]

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed as follows:

Regular Mail

Department of Business Oversight
Attn: Karen Fong, Law and Policy Division
1515 K Street, Suite 200
Sacramento, CA 95814

Electronic Mail

regulations@dbo.ca.gov

Facsimile

(916) 322-5875

Comments may be submitted until 5:00 p.m., February 24, 2014. If the final day for the acceptance of comments is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

INFORMATIVE DIGEST [Government Code Section 11346.5, Subdivision (a)(3)]

Policy Statement and Specific Benefits Anticipated from Regulatory Action
[Government Code Section 11346.5, Subdivision (a)(3)(C)]

The objectives of the proposed regulations are to:

- Adopt necessary rules to implement the Pilot Program for Increased Access to Responsible Small Dollar Loans. The pilot program was established by Senate Bill 318 to increase the availability to Californians of responsible small dollar loans of at least \$300 but less than \$2,500.
- Repeal the regulations of the former program, the Pilot Program for Affordable Credit-Building Opportunities, because the program was abolished by Senate Bill 318 effective January 1, 2014.
- Amend the existing rule on advertising to provide guidance to licensees under the California Finance Lenders Law on how to report license information in advertisements.

The specific benefits anticipated by the proposed adoption of the rules include increasing the supply of responsible small dollar loans in the financial services market. The Department also anticipates benefits to the general economy from encouraging economic development in California through the expansion of a small dollar loan market. By making affordable small dollar loans more accessible, helping consumers build or re-build their credit, and providing them with financial and credit education at no cost, the Department further anticipates benefits to the economic welfare of California consumers. Moreover, by adopting the rules and forms in compliance with California's rulemaking procedures and standards, the proposed regulatory action increases transparency in government and encourages public participation in developing the rules.

Summary of Existing Laws and Regulations, and Effect of Proposed Action
[Government Code Section 11346.5, Subdivision (a)(3)(A)]

Finance lenders and brokers are regulated under the California Finance Lenders Law by the Department. Existing law regulates the interest, administrative fees and delinquency fees that a licensee may charge on loans made under the law, and prohibits a licensee from paying loan referral fees to unlicensed persons.

The Legislature established the former pilot program, the Pilot Program for Affordable Credit-Building Opportunities, under the California Finance Lenders Law to increase the availability of affordable small dollar loans and provide credit-building opportunities for consumers [Senate Bill 1146 (Chap. 640, Stats. 2010)]. However, the Affordable Credit-Building Opportunities pilot program has not resulted in a substantial increase in the availability of small dollar loans and therefore Senate Bill 318 was enacted to abolish the former pilot program and establish in its place another pilot program, the Pilot Program for Increased Access to Responsible Small Dollar Loans, under the California Finance Lenders Law. The newly established pilot program was intended by the Legislature to build upon the knowledge and experiences of the former pilot program.

The laws for both the former pilot program and the Increased Access to Responsible Small Dollar Loans pilot program are substantially similar. Specifically, licensees and persons seeking licensure under the California Finance Lenders Law are required to file an application and pay a fee to the Department to participate in the pilot program. Existing law makes licensees of the former pilot program subject to the new pilot program and provides that any outstanding loans made under the former pilot program remain subject to the terms and conditions in effect at the time the loan was made.

Under existing law, licensees may charge higher interest rates and fees on loans of at least \$300 but less than \$2,500, and pay referral fees to finders for referring customers to the licensee, subject to specified registration and compensation restrictions. Existing law identifies the services a finder is authorized to perform under the pilot program. Licensees are required under existing law to notify the Department within 15 days of entering into a contract with a finder, pay an annual finder registration fee to the Department, and report to the Department annually on the business and operations with a finder. Existing law also authorizes the Department to examine the operations of pilot program participants and finders to ensure that their activities are in compliance with the law, requires the Department to examine licensees every two years, and makes a licensee responsible for a finder's violation of the law. Existing law authorizes the Department to bar or prohibit use of a finder, and prohibits payment to a finder who has been barred by the Commissioner.

Existing law requires licensees to offer a Department-approved credit education program to borrowers and underwrite loans in compliance with specified standards. Existing law also requires licensees to provide various notices and loan disclosures to applicants and borrowers.

Existing law authorizes a pilot program participant to appoint one or more branch managers with responsibility over multiple branch locations, subject to the Department's

approval. Licensees not participating in the pilot program may not under the California Finance Lenders Law appoint a branch manager over more than branch location. Existing law also requires the Department to conduct a random sample of borrowers, and to prepare reports and post the reports on the Department's Internet Web site concerning utilization of the pilot program.

Existing law also requires licensees to disclose in any advertisement that the licensee is licensed under the California Finance Lenders Law.

This regulatory action proposes the following rules to implement the new Pilot Program for Increased Access to Responsible Small Dollar Loans:

- Provide the procedures and time period for licensees to report changes about a finder.
- Provide the procedures and time period for licensees to request approval from the Department to appoint a branch manager with responsibility for multiple branch locations.
- Set forth the application form, filing process, and fees for licensees to apply to participate in the pilot program.
- Set forth the finder registration form, filing process and annual finder registration fees.
- Set forth the annual report form and the instructions to complete the form to enable licensees to report on the business and operations, including finder activities, under the pilot program.
- Inform licensees about additional borrower information, not typically required in a loan transaction, which licensees are required to collect from borrowers for purposes completing the annual report.
- Identify the information that must be included in a credit education program or seminar, and provide the procedures for licensees to obtain the Department's approval of the program or seminar.
- Set forth the recordkeeping requirements and evidence of compliance for licensees concerning the consumer education offer, consumer reporting requirements and loan underwriting standards.
- Provide the procedures to enable licensees to verify a finder's status before compensating the finder.
- Set forth the recordkeeping requirements and evidence of compliance for licensees concerning notices and other disclosures, including notification of payments and due dates, that licensees are required to provide to consumers.

- Clarify when a finder is providing services to a licensee and the prohibition against a finder providing counseling or advice to a borrower or prospective borrower.
- Identify the information that licensees must make available to the Department for purposes of conducting the survey of borrowers.

The regulatory action also proposes to:

- Repeal the regulations under the Pilot Program for Affordable Credit-Building Opportunities.
- Clarify for licensees under the California Finance Lenders Law how to disclose license information in advertisements.

Existing Federal Regulation or Statute [Government Code Section, Subdivision (a)(3)(B)]

Finance lending is largely subject to state law and therefore there is no existing comparable federal regulation or statute.

Existing State Regulations [Government Code Section 11346.5, Subdivision (a)(3)(D)]

The Department has conducted an evaluation of whether the proposed regulations are consistent with existing laws and has concluded that these are the only regulations that modify on a trial basis small-dollar lending. The proposed regulatory action is consistent with existing regulations and policy considerations under the California Finance Lenders Law, and therefore the proposed amendments are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION [Government Code Section 11346.5, Subdivision (a)(5) and (6), and (12)(A)]

- Mandate on local agencies or school districts: none.
- Cost or savings to any state agency: none.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: none.
- Other nondiscretionary cost or savings imposed on local agencies: none.
- Cost or savings in federal funding to the state: none.
- Significant effect on housing costs: none.

ECONOMIC IMPACT ON BUSINESS [Government Code Section 11346.5, Subdivision (a)(8)]

The Commissioner has made an initial determination that the 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.

The Department has not relied upon any facts, evidence, documents, testimony or other evidence to support the initial determination that the regulation will not have a significant adverse economic impact on business.

EFFECT ON SMALL BUSINESS [Title 1, California Code of Regulations, Section 4]

The proposed regulations will not affect small business because finance lenders are not a small business within the meaning of Government Code section 11342.610.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS
[Government Code Section 11346.5, Subdivision (a)(9)]

Participation in the pilot program is voluntary and no lender will be required to participate. A licensee or lender seeking to participate in the program will incur costs for preparing and submitting an application, complying with the consumer education requirements, ensuring compliance with the program requirements, developing and providing notices and loan disclosures to consumers, collecting data and reporting annually to the Department.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS [Government Code Section 11346.5, Subdivision (a)(10)]

The Department has determined that:

- The proposed action will not create or eliminate jobs within California;
- The proposed action will not create new businesses or eliminate existing businesses within this state;
- The proposed action may positively affect the expansion of businesses currently doing business within California;
- The proposed action may benefit the health and welfare of California residents; and
- No benefits or adverse impacts to worker safety or to the state's environment are anticipated from this regulatory action.

BUSINESS REPORTING REQUIREMENT [Government Code Section 11346.5, Subdivision (a)(11)]

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

CONSIDERATION OF ALTERNATIVES [Government Code Section 11346.5, Subdivision (a)(13)]

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department 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 the law.

AVAILABILITY OF THE NOTICE, STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE [Government Code Section 11346.5, Subdivision (a)(16) and (20), and (b)]

As of the date this notice is published, the rulemaking file consists of this notice, the initial statement of reasons and the proposed text of the regulation. The proposed text (Document PRO 15/13 - B) may be obtained from any of the following Department offices:

Los Angeles Office:
320 West 4th Street, Suite 750
Los Angeles, CA 90013-2344

Sacramento Office:
1515 K Street, Suite 200
Sacramento, CA 95814-4052

San Diego Office:
1350 Front Street, Room 2034
San Diego, CA 92101-3697

San Francisco Office:
One Sansome Street, Suite 600
San Francisco, CA 94104-4448

The initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available by requesting Document PRO 15/13 - C from the contact person designated below.

The notice, initial statement of reasons and proposed text are also available on the Department's Web site at www.dbo.ca.gov. To access the documents from the Department's Web site, click on the "Laws & Regs" tab at the top of the home page, click on the "Rulemaking" link under "Division of Corporations", and then click on the "California Finance Lenders Law" link.

As required by the Administrative Procedure Act, the Law and Policy Division maintains the rulemaking file. The rulemaking file is available for public inspection and copying throughout the rulemaking process at the Department of Business Oversight, Law and Policy Division, 1515 K Street, Suite 200, Sacramento, California 95814.

AVAILABILITY OF CHANGED OR MODIFIED TEXT [Government Code Section 11346.5, Subdivision (a)(18)]

If the Department makes changes which are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the Department adopts, amends or repeals the regulations as revised. A request for a copy of any modified regulation(s) should be

addressed to the contact person designated below. The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS [Government Code Section 11346.5, Subdivision (a)(19)]

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named below or may be accessed on the Department's Web site listed above.

CONTACT PERSON [Government Code Section 11346.5, Subdivision (a)(14)]

Nonsubstantive inquiries concerning this action, such as requests for copies of the proposed regulation or questions regarding the timelines or rulemaking status, may be directed to:

Karen Fong
Staff Services Analyst
1515 K Street, Suite 200
Sacramento, California 95814
Telephone: (916) 322-3553
e-mail: Karen.Fong@dbo.ca.gov

Inquiries regarding the substance of the proposed regulation may be directed to:

Peggy Fairman
Corporations Counsel
1515 K Street, Suite 200
Sacramento, California 95814
Telephone: (916) 324-5217
e-mail: Peggy.Fairman@dbo.ca.gov

Dated: December 11, 2013
Sacramento, California