

**State of California  
Office of Administrative Law**

**In re:  
Department of Financial Protection  
and Innovation**

**Regulatory Action:  
Title 10, California Code of Regulations**

**Adopt sections: 80.126.40, 80.156.10,  
80.159.10, 80.159.20,  
80.159.30, 80.165.10,  
1200, 1210, 1211,  
1212, 1213, 1214,  
1215, 1216, 1217,  
1218, 1220, 1221,  
1222, 1230, 1240, 1250**

**Amend section: 80.3002**

**DECISION OF DISAPPROVAL OF  
REGULATORY ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2026-0330-04**

**OAL Matter Type: Regular (S)**

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**SUMMARY OF REGULATORY ACTION**

This regulatory action by the Department of Financial Protection and Innovation (Department) proposes to adopt and amend regulations that establish license and application procedures for persons engaged in digital financial asset business activity.

On March 30, 2026, the Department submitted the above-referenced regulatory action to the Office of Administrative Law (OAL) for review. On May 12, 2026, OAL notified the Department that OAL disapproved the proposed regulatory action pursuant to the Administrative Procedure Act (APA). This Decision of Disapproval of Regulatory Action explains the reasons for OAL's action.

## **DECISION**

OAL disapproved the action because the proposed regulatory changes failed to comply with the clarity standard of Government Code section 11349.1, subdivision (a)(3), and for incorrect procedure.

## **DISCUSSION**

The Department's regulatory action must satisfy requirements established by the part of the APA that governs rulemaking by a state agency. Any regulation adopted, amended, or repealed by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute expressly exempts the regulation from APA coverage. (Gov. Code, § 11346.) No exemption applies to the present regulatory action under review.

Before any regulation subject to the APA may become effective, the regulation is reviewed by OAL for compliance with the procedural requirements of the APA and the standards for administrative regulations in Government Code section 11349.1. Generally, to satisfy the APA standards, a regulation must be legally valid, supported by an adequate record, and easy to understand. In this review, OAL is limited to the rulemaking record and may not substitute its judgment for that of the rulemaking agency regarding the substantive content of the regulation. This review is an independent check on the exercise of rulemaking powers by executive branch agencies intended to improve the quality of regulations that implement, interpret, and make specific statutory law, and to ensure that the public is provided with a meaningful opportunity to comment on regulations before they become effective.

### **1. CLARITY STANDARD**

In adopting the APA, the Legislature found that the language of many regulations was unclear and confusing to persons who must comply with the regulations. (Gov. Code, § 11340, subd. (b).) Government Code section 11349.1, subdivision (a)(3), requires that OAL review all regulations for compliance with the clarity standard. Government Code section 11349, subdivision (c), defines "clarity" to mean "written or displayed so that the

meaning of regulations will be easily understood by those persons directly affected by them.”

The “clarity” standard is further defined in section 16 of title 1 of the California Code of Regulations (CCR), which provides:

In examining a regulation for compliance with the “clarity” requirement of Government Code section 11349.1, OAL shall apply the following standards and presumptions:

- (a) A regulation shall be presumed not to comply with the “clarity” standard if any of the following conditions exists:
  - (1) the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning; or
  - (2) the language of the regulation conflicts with the agency’s description of the effect of the regulation; or
  - (3) ...
  - (4) ...
  - (5) the regulation presents information in a format that is not readily understandable by persons “directly affected;” or
  - (6) ...
- (b) Persons shall be presumed to be “directly affected” if they:
  - (1) are legally required to comply with the regulation; or
  - (2) are legally required to enforce the regulation; or
  - (3) derive from the enforcement of the regulation a benefit that is not common to the public in general; or
  - (4) incur from the enforcement of the regulation a detriment that is not common to the public in general.

The following provisions in the Department’s proposed regulatory action do not satisfy the clarity standard.

### **1.1 Proposed Subsection (d) of Section 1212**

Proposed subsection (d) of section 1212 reads:

Nothing contained in this section shall prohibit the Commissioner from requiring an applicant to correct a deficiency in the application. The Commissioner may consider an application

abandoned if the Commissioner does not receive the information required to correct a deficiency within sixty (60) calendar days of a written notification requesting such information.

The Department's Initial Statement of Reasons provides in relevant part the following description of the effect of this regulatory provision:

[Subsection (d)] also confirms that the applicant will have an opportunity to provide any required information, rather than facing a denial based on lack of completeness. This [subsection] also clarifies that an application will be considered abandoned if the applicant does not provide the information required to correct the deficiency within 60 days of a written notification requesting such information, unless otherwise given an extension of time. This is necessary to provide clarity about the status of the application.

Proposed subsection (d) is unclear for two reasons.

First, proposed subsection (d) is unclear because it can reasonably and logically be interpreted to have more than one meaning and it presents information in a format that is not readily understandable by persons "directly affected." (Cal. Code Regs., tit. 1, § 16, subs. (a)(1) and (a)(5).) The use of "may" without enumerated factors, conditions, or criteria makes it unclear to the regulated public when and how the Commissioner would consider an application abandoned after having not received the information required to correct the application deficiency within 60 calendar days of notification. Additionally, it is unclear what occurs as a result of the Commissioner considering an application abandoned.

Second, proposed subsection (d) is unclear because the proposed language conflicts with the Department's description of the effect of the proposed subsection. (Cal. Code Regs., tit. 1, § 16, sub. (a)(2).) While the proposed regulation text does not provide for extensions of time to correct application deficiencies beyond the specified 60 calendar days, the Department's Initial Statement of Reasons indicates that an extension of time may be granted to an applicant. This discrepancy makes it unclear whether an applicant with a deficient application can receive an extension of time to provide the Commissioner with the information required to correct the deficiency at some

time beyond 60 calendar days of written notification requesting such information, and if so, how.

## 1.2 Proposed Section 1230

Proposed section 1230 reads:

(a) All surety bonds, amendments, cancellations, notices of claims, and information related to surety bonds such as riders and endorsements shall be filed through NMLS for transmission to the Commissioner.

(b) The surety bond shall be in the form of the "electronic surety bond form," titled "DIGITAL FINANCIAL ASSETS LAW LICENSEE BOND," set forth in title 11, section 25 (31.30), of the California Code of Regulations.

(c) The surety bond shall not be cancelled, in whole or in part, without at least sixty (60) calendar days' notice to the Commissioner by the surety, bonding, or insurance company.

(d) The surety bond shall provide that the surety, bonding, or insurance company issuing the bond provide notice to the Commissioner within ten (10) calendar days of service of any action.

Financial Code section 3207, which proposed section 1230 implements, interprets, and makes specific, states in relevant part:

(a)(1)(A) A licensee shall maintain a surety bond or trust account in United States dollars in a form and amount as determined by the department for the protection of residents that engage in digital financial asset business activity with the licensee.

...

(3) Security deposited under this section shall cover claims for a period determined by the department for the protection of residents with whom a licensee engages in digital financial business activity, including for an additional period the department specifies

after the licensee ceases to engage in digital financial asset business activity with or on behalf of a resident.

Proposed section 1230 is unclear because it presents information in a format that is not readily understandable by persons “directly affected.” (Cal. Code Regs., tit. 1, § 16, sub. (a)(5).) As written, it is unclear from the proposed section how the Department will determine the amount of the surety bond to be maintained by a licensee, as required by Financial Code section 3207, subdivision (a)(1)(A). It is also unclear from the proposed section how the Department will determine the period of time for which a licensee’s surety bond must cover claims against the licensee, as required by Financial Code section 3207, subdivision (a)(3).

For the reasons discussed above, the proposed regulatory changes failed to comply with the clarity standard of the APA.

## **2. INCORRECT PROCEDURE**

OAL also notes the following issues that must be addressed prior to any resubmission of this regulatory action.

### **2.1 Form 399 – Fiscal Impact and Department of Finance Concurrence**

Government Code section 11347.3, subdivision (b)(5), requires that a rulemaking file include the estimate, together with the supporting data and calculations, required by Government Code section 11346.5, subdivision (a)(6). Government Code section 11346.5, subdivision (a)(6), requires:

An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

Government Code section 11357 requires that the Department of Finance (Finance) adopt instructions for inclusion in the State Administrative Manual (SAM) prescribing the methods that an agency shall use in making the estimate

required by Government Code section 11346.5, subdivision (a)(6). These instructions are found in SAM, sections 6600 through 6616, and the STD. Form 399 Economic and Fiscal Impact Statement.

SAM, section 6602 provides the following definitions for “fiscal costs” and “revenues” that are applicable to the SAM guidelines:

**Fiscal Costs.** All additional expenses for which either supplemental financing or the redirection of existing staff and/or resources (with or without the need for supplemental funding) is required. Costs include those which can be absorbed in an agency's existing budget.

...

**Revenues.** Any changes in the amounts of operating income received by state and local agencies as the result of an executive regulation must also be identified. In this context, revenue includes taxes, state and/or federal assistance, fees, licenses, and so forth.

SAM, section 6604 provides in relevant part:

A state agency that adopts, amends, or repeals a routine regulation or emergency regulation must make...an estimate of fiscal impact resulting from the "regulation" on the following:

...

**State Agencies**

1. Any other impacts such as revenue changes.
2. Any costs that necessarily will be incurred in reasonable compliance, administration, implementation, and/or enforcement by the issuing state agency and/or any other state agency.
3. Any savings.

SAM, section 6614 provides in relevant part:

A Finance Program Budget Manager (PBM) or designee signature is required when the Fiscal Impact Statement on the STD. 399 reflects either costs or savings, whether budgeted or not. The estimate in a STD. 399 that is signed by the agency must reflect the actual

language of the proposed regulation adopted by the agency. A PBM signature reflects a concurrence that the estimates provided on the STD. 399 are an accurate estimation of the fiscal impact of the proposed regulation.

SAM, section 6615 further provides:

A state agency is not required in all instances to obtain the concurrence of [Finance] in its estimate of the fiscal impact of its proposed regulation on governmental agencies. Such concurrence is required when the adoption, amendment, or repeal of a regulation results in local agency costs or savings, in state agency costs or savings, or in other nondiscretionary instances such as local/state revenue increases or decreases which must be depicted on the STD. 399 as follows:

A.1 - Reimbursable Local Costs	B.1 - State Costs
A.2 - Non-Reimbursable Local Costs	B.2 - State Savings
A.3 - Local Savings	B.4 - Other
A.6 - Other	

In this rulemaking action, the Department indicated on the STD. Form 399 that there are no fiscal impacts estimated as a result of this proposed regulatory action, including fiscal effects on state government. These representations appear inconsistent with information contained elsewhere in the rulemaking record.

First, proposed subsection (b) of section 1212 proposes establishing a fee, reading: “Pursuant to Financial Code section 3203, subdivision (a)(3), the applicant shall pay a non-refundable application fee of seven thousand and five hundred dollars (\$7,500).”

The Department's Initial Statement of Reasons also provides:

Subdivision (b) [of Section 1212] sets at \$7,500 the nonrefundable application fee to “cover the reasonable costs of application review” required under Financial Code section 3203, subdivision

(a)(3). The \$7,500 fee will cover a review of the application to ensure that all the required elements under subdivision (a)(3) have been submitted. This review is separate from the reasonable costs of the Department's investigation under subdivision (b).<sup>[fn]</sup>

The Department has determined that it will need 62.5 hours of examiner staff time to conduct an application review under subdivision (a)(3). At a rate of \$120 per hour for a Department examiner,<sup>[fn]</sup> the review will cost the Department \$7,500 in personnel costs.

To determine the minimum number of hours required for the initial application review, the Department considered the tasks that an examiner will need to perform as part of this review.

...

The Department considered charging \$20,000 for the application fee required under Financial Code 3203, subdivision (a)(3). The \$20,000 fee could include the technology costs associated with the review, as well as additional expenses and costs. After assessing the licensure structure and engaging with stakeholders the Department decided to charge the lower application fee of \$7,500 for the initial application review.

And a regulatory impact assessment for this action prepared by Berkeley Economic Advising and Research, LLC, provides:

2. All [Digital Financial Assets Law] license applicants would be required to pay a one-time initial application fee of \$7,500 and a one-time organizational background check fee (\$46.25). The initial application fee dominates the direct private cost of the regulation [sic] We assume each operator corresponds to one representative "person," obliged to pay initial and annual fees of \$30 and pay for a one-time personal background check (\$14.00).

...

4. This estimate only includes actual fees paid, rather than including supporting staff and administrative expenses. Because the license application rules are relatively straightforward, this approach seems reasonable.

These inconsistencies must be addressed, and the fiscal impacts clarified in the rulemaking record. Additionally, to the extent the Department estimates that proposed section 1212 will result in costs and/or revenue increases to the Department, the STD. Form 399 needs to reflect this and the Department must obtain Finance signoff pursuant to SAM, section 6615.

## **2.2 Statement of Mailing of Notice of Proposed Action**

CCR, title 1, section 86, subsection (a), sets forth the requirements for confirming the agency complied with the requirement to mail the Notice of Proposed Action pursuant to Government Code section 11346.4, subdivision (a), and reads:

The rulemaking record shall contain a statement confirming that the agency complied with the provisions of Government Code section 11346.4(a)(1) through (4) and (6) regarding the mailing and posting of notice of proposed action at least 45 days prior to the public hearing, if any, and close of the public comment period, and stating the method(s) of delivery and the date(s) upon which the notice was mailed and posted on the agency's website, if the agency has a website. This section is not intended to require an agency to provide a copy of its mailing list to support the statement.

The statement provided in the Department's rulemaking record does not comply with CCR, title 1, section 86, subsection (a).

## **2.3 Statement of Mailing for a Document Added to the Rulemaking Record**

Government Code section 11347.1 states in relevant part:

(a) An agency that adds any technical, theoretical, or empirical study, report, or similar document to the rulemaking file after publication of the notice of proposed action and relies on the document in proposing the action shall make the document available as required by this section.

(b) At least 15 calendar days before the proposed action is adopted by the agency, the agency shall mail to all of the [persons specified in subdivisions (b)(1) through (4)] a notice identifying the added document and stating the place and business hours that the document is available for public inspection...

(c) The document shall be available for public inspection at the location described in the notice for at least 15 calendar days before the proposed action is adopted by the agency.

(d) Written comments on the document or information received by the agency during the availability period shall be summarized and responded to in the final statement of reasons as provided in Section 11346.9.

(e) The rulemaking record shall contain a statement confirming that the agency complied with the requirements of this section and stating the date on which the notice was mailed.

After publication of the Notice of Proposed Action, the Department added to the rulemaking record a document titled "Initial Statement of Reasons Addendum." The rulemaking record, however, does not include the statement required by Government Code section 11347.1, subdivision (e).

## **2.4 Final Statement of Reasons – Summary and Response to Comments**

Government Code section 11346.9, subdivision (a)(3), requires the Final Statement of Reasons to include "[a] summary of each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reasons for making no change..."

Deficiencies in the Department's summaries and responses have been identified. These deficiencies will be discussed with the Department.

## **2.5 Document Incorporated by Reference Not Attached to the Form 400**

CCR, title 1, section 20, subsection (e), provides:

Where a regulation which incorporates a document by reference is approved by OAL and filed with the Secretary of State, the document so incorporated shall be deemed to be a regulation subject to all provisions of the APA.

CCR, title 1, section 6.5, subsection (a), in relevant part, requires:

For all regulatory actions submitted electronically to OAL for publication in the California Code of Regulations and/or transmittal to the Secretary of State for filing, the agency must include:

- (1) One electronic file containing the following documents:
  - (A) One electronic copy of the certified regulation text, including each document incorporated by reference (if any), in .pdf or docx format...

The proposed regulations incorporate by reference three documents. The Form 400 and final regulation text submitted to OAL, however, did not include the aforementioned documents incorporated by reference. Upon resubmittal, the Department must attach all three forms incorporated by reference to the Form 400 and final regulation text.

## **2.6 Final Regulation Text**

The final regulation text, including authority and reference citations, requires nonsubstantive revisions pursuant to CCR, title 1, section 40. Additionally, the final regulation contains illustration errors that require correction. These revisions will be discussed with the Department.

## **CONCLUSION**

For the foregoing reasons, OAL disapproved the above-referenced regulatory action. Pursuant to Government Code section 11349.4, subdivision (a), the Department may resubmit revised regulations within 120 days of its receipt of this Decision of Disapproval of Regulatory Action. A copy of this Decision will be emailed to the Department on the date indicated below.

The Department must make any substantive regulatory text changes, which are sufficiently related to the originally noticed text, available for public comment for at least 15 days pursuant to subdivision (c) of Government Code section 11346.8 and CCR, title 1, section 44. Any comments containing objections or recommendations must be summarized and responded to in the Final Statement of Reasons, and where appropriate, the Department must also revise the existing responses to comments to reflect the changes to the regulation text. The Department must resolve all other issues raised in this Decision of Disapproval of Regulatory Action prior to the resubmittal of this regulatory action.

Date: May 19, 2026

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/s/

Stephen P. Mehlert  
Senior Attorney

For: Kenneth J. Pogue  
Director

Original: KC Mohseni, Commissioner

Copy: Diana Pha

cc: Department of Finance  
(Gov. Code, § 11349.1(e))