IN REPLY REFER TO
FILE NO: PRO 07-24

October 28, 2024

INVITATION FOR COMMENT ON PROPOSED RULEMAKING
UNDER THE CALIFORNIA CONSUMER FINANCIAL PROTECTION LAW
(PRO 07-24)

BACKGROUND

On September 25, 2020, Governor Newsom signed AB 1864 (Chapter 157, Statutes of 2020), establishing the California Consumer Financial Protection Law (CCFPL) under Division 24 of the Financial Code.

The CCFPL went into effect January 1, 2021, giving the Department of Financial Protection and Innovation (DFPI) new regulatory powers to protect consumers from unfair, deceptive, or abusive practices committed by providers of previously unlicensed financial services or products.

Since 2021, the DFPI has taken numerous steps to implement the CCFPL, including advancing several significant rulemaking packages.[1]

Through regulation package PRO 01-21, the DFPI has established new registration and reporting requirements for four previously unregistered products and services in California: (1) debt settlement services, (2) student debt relief services, (3) private postsecondary education financing, and (4) income-based advances, including "earned wage access" products.[2]

Pursuant to this Invitation for Comment, the DFPI seeks input as to what other industries, in addition to those set out in PRO 01-21, the DFPI should establish registration and reporting requirements for under the CCFPL.

Applicable Law

The CCFPL makes it unlawful for "covered persons" or "service providers," as defined by Financial Code section 90005, subdivisions (f) and (n), to:

(1) Engage, have engaged, or propose to engage in any unlawful, unfair, deceptive, or abusive act or practice with respect to consumer financial products or services.

[1] See https://dfpi.ca.gov/california-consumer-financial-protection-law-regulations-legislation-opinions-and-releases/.

[2] Regulation package PRO 01-21 received approval from the Office of Administrative Law (OAL) on October 11, 2024. The regulations will go into effect February 15, 2025.

(2) Offer or provide to a consumer any financial product or service not in conformity with any consumer financial law or otherwise commit any act or omission in violation of a consumer financial law.

(3) Fail or refuse, as required by a consumer financial law or any rule or order issued by the department thereunder, to do any of the following:

(a) Permit the department access to or copying of records.

(b) Establish or maintain records.

(c) Make reports or provide information to the department.

(Fin. Code, § 90003, subd. (a).)

The CCFPL also authorizes the DFPI to establish rules relating to covered persons, service providers, and consumer financial products or services. These include rules "regarding registration requirements applicable to a covered person engaged in the business of offering or providing a consumer financial product or service," (Fin. Code § 90009, subd. (a)(1)) including rules:

(a) For registration fees (Fin. Code § 90009, subd. (a)(1));

(b) Facilitating oversight of covered persons and assessment and detection of risks to consumers (Fin. Code § 90009, subd. (b)(1));

(c) Requiring covered persons to generate, provide, or retain records to facilitate oversight and to assess and detect risks to consumers (Fin. Code § 90009, subd. (b)(2)); and

(d) Ensuring that covered persons are legitimate and able to perform their obligations to consumers (Fin. Code § 90009, subd. (b)(3)).

In addition, the CCFPL empowers the DFPI to write rules requiring covered persons and service providers to file "annual or special reports, or answers in writing to specific questions." (Financial Code § 90009, subd. (f)(2).)

INVITATION FOR COMMENT

The DFPI seeks input from stakeholders in developing regulations to implement the CCFPL. Below, the DFPI has formulated topics and questions to assist interested parties in providing input on rulemaking.

The DFPI invites stakeholders to provide example language for regulations relating to their responses to the questions below.

POTENTIAL TOPICS FOR RULEMAKING

Through regulation package PRO 01-21, the DFPI has established new registration and reporting requirements for four previously unregistered products and services in California: (1) debt settlement services, (2) student debt relief services, (3) private postsecondary education financing, and (4) income-based advances, including "earned wage access" products.

The DFPI seeks input as to what additional industries the DFPI should establish registration and reporting requirements for under the CCFPL.

New Categories of Registrants

(1) For what additional industries should the DFPI establish registration requirements under Financial Code section 90009, subdivision (a)?

(2) What consumer protection risks do those industries present to consumers that would make it appropriate to prioritize the registration of those industries over others?

(3) The DFPI invites stakeholders to submit examples of acts or practices in those industries that stakeholders find concerning.

(4) For each industry suggested for registration, what trade associations, if any, represent that industry?

Oversight and Reporting Requirements

(5) For each industry that a stakeholder states should be a priority for registration, what rules should the DFPI establish to facilitate oversight of the industry, what records should the DFPI require those registrants to maintain, and what requirements should the DFPI impose to ensure that covered persons are legitimate and able to perform their obligations to consumers? (Fin. Code § 90009, subd. (b).)

(6) What data should the DFPI require registrants to submit in annual or special reports to the DFPI? (Fin. Code § 90009, subd. (f)(2).) Why should the DFPI collect this data?

Definitions

(7) For each industry that a stakeholder states should be a priority for registration, are there terms applicable to the industry that are not currently defined under the CCFPL? Should DFPI consider promulgating regulation text defining these terms? What should be the content of these definitions?

Economic Impact

(8) For each industry suggested for registration, provide any information relevant to estimating the number of players in the industry. How many companies would be impacted by a registration requirement?

(9) For each industry suggested for registration, the DFPI invites stakeholders to provide a description of the economic impact (if known), including potential costs and benefits, of the recommendation for California businesses and consumers.

TIME FOR COMMENTS

The Commissioner invites interested parties to submit comments by December 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. Include "PRO 07-24" in the subject line and copy Summer.Volkmer@dfpi.ca.gov and Bosco.Li@dfpi.ca.gov.

Mail

Department of Financial Protection and Innovation, Legal Division
Attn: DeEtte Phelps, Regulations Coordinator
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CONTACT PERSONS

Questions regarding this Invitation for Comment may be directed to Summer Volkmer, Senior Counsel for the Commissioner, at Summer.Volkmer@dfpi.ca.gov, and Bosco Li, Counsel for the Commissioner, at Bosco.Li@dfpi.ca.gov.