

California DFPI Invites Comments on Potential Rulemaking to Implement Digital Financial Assets Laws

November 28, 2023

On November 20, 2023, the California Department of Financial Protection and Innovation (DFPI) issued an [invitation for comments](#) on a potential rulemaking relating to [two new California laws](#) that will impose sweeping obligations on companies engaged in virtual currency activities in California and with California residents. The first law, Assembly Bill 39, prohibits people from engaging in digital financial asset business activity – or holding themselves out as being able to engage in digital financial asset business activity – without meeting certain criteria and obtaining a license from the DFPI. The second, Senate Bill 401, imposes requirements on operators of digital financial asset transaction kiosks.

The DFPI refers to the two bills collectively as the Digital Financial Assets Law (DFAL). The DFAL begins taking effect on January 1, 2024, with covered persons required to be licensed, or to have submitted a license application and be awaiting approval or denial of that application, on or before July 1, 2025. As a result, the DFPI is considering promulgating rules for the DFAL licensing process and seeks public comments on four substantive areas of the law:

1. License application form and related fees.
2. Surety bonds and trust accounts.
3. Capital.
4. Stablecoin approval process.

The DFPI also invites comments on other DFAL-related topics and on what future rulemaking actions related to the administration of the DFAL it should consider, though the invitation notes that the DFPI anticipates separately inviting comments on other topics in the future.

Comments must be submitted to the DFPI by January 12, 2024. The DFPI will host a virtual informal listening session on January 8, 2024, for interested parties to discuss feedback live with DFPI staff. For more information on comment submission guidelines and registration for the virtual session, visit [the DFPI's website](#).

Below, we've summarized the substantive topics on which the DFPI is seeking comments. Interested parties should review the invitation for comments and consider weighing in on matters of concern at this early stage, when the DFPI is still gathering information and soliciting broad industry feedback.

License application form and related fees

The DFPI requests feedback on "any other information" it should require by rule as part of the application process, beyond what the new statute expressly requires applicants to submit. The DFPI also is inviting comments on how it should approach the statutory provisions that authorize fees to cover the reasonable costs of application review and require the applicant to pay the reasonable costs of the DFPI's investigation of whether the applicant meets statutory criteria for the issuance of a license. For example, the

DFPI asks whether it should charge variable application fees based on the type and complexity of the application that is submitted, as well as how it should approach determining reasonable costs and fees.

Surety bonds and trust accounts

The DFPI also invites comments on what factors it should consider in determining the surety bond or trust account amounts it may require under Financial Code Section 3207, whether the surety bond or trust accounts should vary based on the type of activity being licensed, and whether a minimum amount should be required. In addition, the DFPI seeks comments on how specific activity requirements under the DFAL, such as custody and reserve requirements, should impact the required surety bond or trust account amounts.

Capital

The DFAL requires a licensee to maintain a minimum capital amount to be determined by the DFPI to “ensure the financial integrity of the licensee and its ongoing operations.” The DFAL includes nine factors for the DFPI to consider in setting the required capital amount, based on an assessment of the specific risks applicable to the licensee. The DFPI invites comments on whether the enumerated factors in the law (e.g., actual and expected volume, amount of leverage employed by the licensee, the liquidity position of the licensee) are sufficient or if other factors should be considered. The DFPI also seeks comments on whether the minimum capital requirements should vary by the type of activity in which the applicant or licensee is engaging.

Stablecoin issues

The DFAL contains provisions specific to the regulation of stablecoins, including requirements that any stablecoin traded, custodied, or otherwise used in a regulated activity under the DFAL be issued by a person licensed and approved under the DFAL to issue a stablecoin (subject to narrow exemptions). The DFPI also invites comments on a number of issues relating to the regulation of stablecoins under the DFAL, including:

- Whether the evaluation of the “quality of assets” that are proposed to be held against stablecoins should consider factors other than whether such assets are “eligible securities” under the existing money transmission law.
- Any particular risks regarding how such assets are owned or held by the issuer that the DFPI should consider.
- Other factors the DFPI should consider in determining whether to approve a stablecoin, such as the amount and type or quality of the issuer’s other liabilities – and whether the stablecoin is listed on the “Greenlist” maintained by the New York State Department of Financial Services.

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