

ADDENDUM TO THE FINAL STATEMENT OF REASONS
FOR THE ADOPTION OF RULES UNDER THE
CALIFORNIA MONEY TRANSMISSION ACT

Update to the Initial Statement of Reasons

Section 95.2: In the text originally noticed to the public, Section 95.2 amended "Form 2" to become Form "DBO-2, Personal Financial Statement for the Confidential Use of the Commissioner of Business Oversight, State of California (Rev. 8-13)." The amendments also update references to the Department of Business Oversight and change the address for the Department. Section 80.4105(c) requires the submission of the applicant's current personal financial statement. Form DBO-2 provides a format that an applicant can use to comply with Section 80.4105 and Financial Code Sections 2032(b)(16) and (17).

Further amendments to the form were added to inform applicants about the use of information contained in the application. First, the Financial Code authorizes the Commissioner to gather and maintain information requested in the form. If any information is submitted in connection with an application or other matter before the Commissioner, that information is deemed necessary to process the application or other matter. If the information in the form is inaccurate or incomplete, the application may be denied or the other matter may be resolved against individual's interests.

Individuals were also advised that providing a social security number requested in a form is voluntary. However, the Department utilizes social security numbers as an identifier for applicants and may be used to verify information provided to the Department. If a social security number is not provided, it may require the Department to use other methods to verify information and may cause delays in the processing of the application. If the information provided cannot be verified by other methods, the application may be rejected.

In the event that fingerprints are required in conjunction with submitting personal information, the Department will provide the necessary instructions for submitting them. Additionally, the processing of information provided in an application may cause a consumer credit report to be prepared pursuant to Title 1.6, Part 4, Division 3, of the Civil Code (commencing with Section 1785.1) or an investigative consumer report pursuant to Title 1.6A, Part 4, Division 3 of the Civil Code (commencing at Section 178I.)

Pursuant to the Information Practices Act (Civil Code Section 1798, et seq.), information provided to the Department will be held in confidence. The Information Practices Act also provides that the Department may share information with the Department of Insurance, other federal and state financial institution regulators, law enforcement agencies, or any other governmental entity if the disclosure is required by state or federal law or if the disclosure assists the Department discharging its duties.

Finally, individuals submitting information to the Department have the right to review information maintained by the Department regarding him or herself unless access to the information is exempt from disclosure by law.

Section 95.3: In the text originally noticed to the public, Section 95.3 amended "Form 3" to become Form "DBO-3, Confidential Resume Submitted to the Commissioner of Business Oversight, State of California (Rev. 8-13)." The amendment also updates references to the Department of Business Oversight. Section 80.4105(c) requires the submission of the applicant's confidential resume. Form DBO-3 provides a format that an applicant can use to comply with Section 80.4105 and Financial Code Sections 2032(b).

Further amendments to the form were added to inform applicants about the use of information contained in the application. First, the Financial Code authorizes the Commissioner to gather and maintain information requested in the form. If any information is submitted in connection with an application or other matter before the Commissioner, that information is deemed necessary to process the application or other matter. If the information in the form is inaccurate or incomplete, the application may be denied or the other matter may be resolved against individual's interests.

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Section 95.600: In the text originally noticed to the public, Section 95.600 adopted Form "DBO-600, Notice of Fingerprint Processing Requirements under the California Money Transmission Act." In order to approve an application for a license, Financial Code Section 2033(b)(2) requires the Commissioner to make a finding that the applicant, the directors and officers of the applicant, any person that controls the applicant, and the directors and officers of any person that controls the applicant are of "good character and sound financial standing." Criminal record checks of the applicant and its executive officers, directors, and control persons, enable the Commissioner to evaluate whether an applicant is of good character and sound financial standing. Therefore, Section 80.4105.10 provides applicants with two options to comply with the requirement for fingerprint and background checks: (a) a fingerprint card or (b) a copy of Requesting Agency Copy of a request for Live Scan Service.

Form DBO-600 provides the instructions for how to request Live Scan Service from the Department of Justice. Financial Code Section 379 authorizes the Commissioner to deliver, or cause to be delivered, to local, state, or federal law enforcement agencies fingerprints taken of a proposed licensee; a director, officer, or employee of a proposed licensee; a proposed controlling person of a licensee; a director, officer, or employee of a proposed controlling person of a licensee; and a director, officer, or employee of a proposed affiliate of a licensee.

Section 95.5030: In the text originally noticed to the public, Section 95.5030 amended "Form 5030" to become "DBO 5030, Authorization for Release of Information (Money Transmitters)." The amendments update references to the Department of Business Oversight. Because the existing regulations correspond to the repealed Payment Instruments Law, the amendments also update the regulations for the Money Transmission Act by deleting references to "payment instruments" and replacing the term with "money transmission." Section 80.4309 requires an applicant to file with the Commissioner an Authorization for Release of Information in the form of Department Form 5030. Thus, it was necessary to include Form 5030 so that an applicant can comply with Section 80.4309.

Nonsubstantive Changes Made to the Regulations During OAL Review

Changes were made throughout the regulation text to correct punctuation, grammar, cross references, authorities and references, numbering, sentence structure and syntax, and removal of redundant language.

Section 80.126: In the text originally noticed to the public, section 80.126 contained a definition for an exempt agent which was removed during OAL Review. This definition does not apply anywhere in the regulation text and therefore it is not needed.

Section 80.4102: This section was changed to formally incorporate a DBO form by reference, "DBO 2110, Application for a License to Engage in the Money Transmission

Business (Rev. 8-13),” in other to comply with Title 1, Section 20, of the California Code of Regulations.

Section 80.4104(e): In subdivision (e) of this section, the word “money” was added before “transmission business” for consistency with the proposed section and the Money Transmission Act.

Section 80.4105(c): In subdivision (c) of this section, statutory citations from the United States Code were added to demonstrate the legal requirement of the Federal Deposit Insurance Corporation Interagency Biographical and Financial Report Form to comply with Title 1, Section 20, of the California Code of Regulations.

Additionally, two forms were incorporated by reference. Originally, the proposed text in Section 80.4105(c) amended “Forms 2 and 3” (Section 95.2 and Section 95.3, respectively) for printing in the California Code of Regulations. The Department decided to eliminate the printed forms and incorporate them by reference instead. Department of Business Oversight Form “DBO-2, Personal Financial Statement for the Confidential Use of the Commissioner of Business Oversight, State of California (Rev. 8-13)” and “DBO-3, Confidential Resume Submitted to the Commissioner of Business Oversight, State of California (Rev. 8-13)” were both incorporated by reference to ensure compliance with Title 1, Section 20, of the California Code of Regulations.

Section 80.4105.10(b)(1)-(3): The regulation text originally noticed to the public contained a discrepancy between sections 80.4105.10 and 95.600 regarding which persons were required to submit fingerprint and background checks for licensure under the Money Transmission Act. The list of required persons for sections 80.4105.10 and 95.600 were amended so that they would be consistent.

Section 80.4120: During the OAL review, the words “stored value” were added after “payment instruments” for consistency with the section.

Section 80.4308: Pursuant to the Governor’s Reorganization Plan No. 2 and effective July 1, 2013, the Department of Corporations and Department of Financial Institutions merged to form the Department of Business Oversight. Section 80.4308, as originally noticed to the public, contained an outdated reference to the Commissioner of Financial Institutions. This reference was repealed and replaced with “Commissioner of Business Oversight.”

Section 80.4309: In the text noticed to the public, this repealed Department Form 5030 and adopted Department Form 4030. However, Department Form 5030, which is published in Title 10, Section 95.5030 of the California Code of Regulations, was amended in the noticed text and is the relevant form to this action. Therefore this section was amended to remove the reference to Form 4030 and revert back to Form 5030.

Sections 95.2 and 95.3: These sections were initially proposed as amendments to forms published in the California Code of Regulations. However, the Department later determined that it would be more effective to incorporate these forms by reference and subsequently it was necessary to repeal them in the CCR.

Section 95.550: This form was originally proposed in the text noticed to the public. However, this form is not referenced anywhere in the regulation text and therefore it is being removed from this rulemaking action.

Section 95.600: As stated above with regards to the changes made to section 80.4105.10, this section was revised to create consistency for persons required to submit fingerprint and background checks.

Section 95.5010: In the original proposed text noticed to the public, Form 5010 (Section 95.5010) was being replaced by Department Form 2110, which is being incorporated by reference in Section 80.4105(c). Therefore, Department Form 5010, published in Title 10, Section 95.5010 is being repealed.

Section 95.5025: Department Form 5025, which is published in Section 95.5025 of the CCR, was not updated since the merger of the Department of Financial Institutions and the Department of Corporations to form the Department of Business Oversight. All of the changes made to the form were nonsubstantive (e.g. replacing a reference to the Commissioner of Financial Institutions with the Commissioner of Business Oversight; replacing references to the Travelers Checks Act with the Money Transmission Act).

Incorporation by Reference [Title 1, California Code of Regulations, Section 20, subdivision (b)(1)]

The following forms are being incorporated by reference in this action:

- DBO-2 Personal Financial Statement for the Confidential Use of the Commissioner of Business Oversight, State of California (Rev. 8-13)
- DBO-3 Confidential Resume Submitted to the Commissioner of Business Oversight (Rev. 08-13)
- DBO-2110 Application for a License to Engage in the Money Transmission Business (Rev. 8-13)

The Department determined that incorporating these forms by reference would be more practical than amending the forms as published in the CCR. It would be cumbersome, unduly expensive, or otherwise impractical to publish these forms in the California Code of Regulations. These forms were available upon direct request from the Department throughout the rulemaking period.