

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

As required by Government Code section 11346.9, the California Department of Business Oversight Commissioner (Commissioner) sets forth below the reasons for the amendment and adoption of regulations contained in Subchapter 80, Title 10, of the California Code of Regulations (C.C.R.).

Effective July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to form the Department of Business Oversight, in accordance with the Governor's Reorganization Plan 2 (GRP 2, 2012), a reorganization of state departments and agencies to provide services more efficiently and effectively. The Department of Business Oversight 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.

The Department of Business Oversight licenses and regulates businesses engaged in financial transactions that were under the former Department of Financial Institutions, such as state-chartered banks, credit unions, trust companies, and money transmitters.

UPDATE OF INITIAL STATEMENT OF REASONS [Government Code section 11346.9, subdivision (a)(1)]

Section 80.3002

The proposed regulation as originally noticed to the public, would have established only two new categories of persons and/or transactions that are exempt from the Money Transmission Act: (1) sale of a money transmission service or product of a person exempt pursuant to Financial Code section 2010; and (2) an Internal Revenue Code section 501(c)(3) public benefit nonprofit.

In the Revised Text of Proposed Changes, dated February 19, 2015, the Department amended Section 80.3002, subdivision (a), to include three additional categories of persons that are exempt from the Money Transmission Act: (1) escrow agents licensed under the Escrow Law (Fin. Code, § 17000 et seq.); (2) check sellers, bill payers, and proraters licensed under the Check Sellers, Bill Payers and Proraters Law (Fin. Code, § 12000 et seq.); and (3) nonprofit community service organizations that meet all of the criteria in Financial Code section 12104 of the Check Sellers, Bill Payers and Proraters Law. These three categories of persons are already licensed or exempt by the Department under different regulatory schemes.

However, upon further consideration of the legislative history of the Money Transmission Act and in particular, the fact that the Money Transmission Act was enacted after the Check Sellers, Bill Payers and Proraters Law, but an express exemption was not granted for such persons, the Department has determined that the

legislative intent was to have check sellers, bill payers and proraters also be within the jurisdiction of the Money Transmission Act. Check sellers, bill payers, and proraters, as those terms are defined in the Check Sellers, Bill Payers and Proraters Law, meet the definition of money transmission under the Money Transmission Act. Financial Code section 12002 defines a “check seller” as “a person: (a) who, for compensation, engages, in whole or in part, in the business of selling checks, drafts, money orders, or other commercial paper serving the same purpose, or receiving money as agent of an obligor for the purpose of paying to a person other than the check seller bills, invoices, or accounts of such obligor, or (b) who, without direct compensation and not as an authorized agent for a utility company, accepts money for the purpose of forwarding it to others in payment of utility bills.” Financial Code section 12002.1 defines a “prorater” as “a person who, for compensation, engages in whole or in part in the business of receiving money or evidences thereof for the purpose of distributing the money or evidences thereof among creditors in payment or partial payment of the obligations of the debtor.”

Financial Code section 2003(q) defines “money transmission” as (1) selling or issuing payment instruments; (2) selling or issuing stored value; or (3) receiving money for transmission. Financial Code section 2003(s) defines a “payment instrument” as “a check, draft, money order, traveler’s check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable.” Therefore, the activities of a check seller, as defined in section 12002(a), fall within the definition of “money transmission” because a check seller sells checks and money orders, which are payment instruments. The activities of a check seller, as defined in section 12002(b), also fall within the definition of “money transmission” because a check seller accepts money for the purpose of forwarding it to others. Lastly, the activities of a prorater, as defined in section 12002.1, are money transmission because a prorater receives money for the purpose of distributing the money.

While the Money Transmission Act was also enacted after the Escrow Law, escrow activity is sufficiently distinct from money transmission to warrant an exemption for licensed escrow agents. Financial Code section 17003 defines “escrow” as:

(a) “Escrow” means any transaction in which one person, for the purpose of effecting the sale, transfer, encumbering, or leasing of real or personal property to another person, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by that third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor, or any agent or employee of any of the latter.

(b) With regard to Internet escrow companies, “escrow” also includes any transaction in which one person, for the purpose of effecting the sale or transfer of personal property or services to another person, delivers money, or its Internet-authorized equivalent, to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by that third person to a grantee,

grantor, promisee, promisor, obligee, obligor, bailee, bailor, or any agent or employee of any of the latter.

Therefore, in the Revised Text of Proposed Changes, dated May 20, 2015, the Department amended subsection (a) of Section 80.3002 to remove an exemption for check sellers, bill payers, and proraters licensed under the Check Sellers, Bill Payers and Proraters Law.

Section 80.4121

The proposed regulation as originally noticed to the public, would have required an applicant to provide “pro forma financial statements for the applicant (including balance sheet, statement of income, statement of cash flows and statement of shareholders’ equity).” The Department has amended Section 80.4121 to still require the same financial statements, but the language has been revised to address each type of financial statement separately in order to make the regulation more understandable.

For example, subdivision (a) now requires an applicant’s plan for engaging in money transmission business, including three years of pro forma financial statements and projections. The requirement for the plan is based on Financial Code section 2032(c)(21). Thus, this amendment provides guidance to the applicant that these items should be grouped together with other information regarding the applicant’s financial statements. Subdivision (a) further specifies that the pro forma financial statements must show the amount of money transmission business conducted, including total transmission money received for each period and average daily transmission liability outstanding for each period, on a monthly basis during the first year of operation, and on a quarterly basis during the second year and third year of operation. This information is necessary to provide sufficient detail about how the applicant’s business will operate.

Subdivision (b) now addresses the applicant’s pro forma balance sheet and requires a basis for the projections. The balance sheet was already required in the proposed regulation as originally noticed to the public. The basis for the projections is now required because this information is necessary to give meaning to the financial statements and projections.

Subdivision (c) now addresses the applicant’s statement of income and requires a basis for the projections. The statement of income was already required in the proposed regulation as originally noticed to the public. The basis for the projections is now required because this information is necessary to give meaning to the financial statements and projections.

Section 80.4312

The proposed regulation as originally noticed to the public, would have changed the expiration date of a license to sixty days after the issuance of a license. After further

consideration, the Department has amended Section 80.4312 to repeal that portion of subdivision (b) related to the expiration of a license because the Money Transmission Act does not provide for an expiration of a license.

Section 80.5303

The proposed regulation as originally noticed to the public, would have added subdivision (c) to include "Fitch Ratings" as one of the eligible securities rating services for purposes of the Money Transmission Act. Subsequently, however, the Department became aware that the correct name is "Fitch, Inc." Thus, subdivision (c) is amended to reflect the correct name.

Similarly, with regard to subdivision (b) the Department became aware that the correct name for "Standard and Poor's Corporation" should be "Standard & Poor's Rating Services." Thus, subdivision (b) has been amended accordingly.

Section 80.5304

The proposed regulation as originally noticed to the public, did not include a reference to the issuer of the securities. The Department has amended Section 80.5304 to include a reference to issuers because short- term ratings are also typically ratings of the obligors and issuers, not just securities. Therefore, Section 80.5304 has been amended to include the following references to issuers of securities: "the issuer of the securities"; the "applicable classes of securities of the rated issuer"; and "the issuers of the applicable classes of securities."

The proposed regulation as originally noticed to the public, also did not specify the context in which the rating categories of the classes of securities or issuers is applicable. Therefore, the Department amended Section 80.5304 to add reference to "subdivisions (4), (6) and (7) of Financial Code section 2082." This was added to clarify that the eligible ratings are for purposes of subdivisions (4), (6) and (7) of Financial Code section 2082 because those subsections expressly refer to securities that have been an assigned an eligible rating.

Subdivision (b) was amended to correct the reference to "Standard & Poor's Rating Services" for the reasons discussed in Section 80.5303 above.

Subdivision (c) was amended to correct the reference to "Fitch, Inc." for the reasons discussed in Section 80.5303 above.

Section 80.5304.1

The proposed regulation as originally noticed to the public added "Debit Card Receivables" as an eligible security. During this rulemaking process, Assembly Bill number 2209 was passed and became effective January 1, 2015. Assembly Bill number 2209 amended

Financial Code section 2082(b)(12) to add to the list of eligible securities any receivable owed by a bank and resulting from a debit funded transmission. Therefore, the Department amended Section 80.5304.1 to reflect this law change.

Section 80.5304.1 was also amended to add the terms "ACH Receivables," "Credit Card Receivables," and "Debit Card Receivables" to describe the new categories of eligible securities under Financial Code section 2082(b)(12). This terminology is defined in Section 80.5305.

Additionally, the Department has corrected a typographical error in Section 80.4104(i)(3) by changing an reference citation from "subdivision (h)(2)" to "subdivision (i)(2)."

The Department has also made a minor correction to the text in Section 80.4105(e) by adding the word "and" between the words "amount" and "type."

LOCAL MANDATE DETERMINATION [Government Code section 11346.9, subdivision (a)(2)]

The proposed regulations do not impose any mandate on local agencies or school districts.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF JULY 25, 2014 THROUGH SEPTEMBER 8, 2014 [Government Code section 11346.9, subdivision (a)(3)]

COMMENT NO. 1 (a): Sustainable Economies Law Center stated that the Department should revise its Notice of Rulemaking Action (Notice) to: (i) include a description of reasonable alternatives to the regulation that would lessen any adverse impact on small businesses; (ii) list the requirements in Government Code section 11346.5(a)(7); and (iii) comply with Government Code section 11346.5(a)(10). Sustainable Economies Law Center also stated that innumerable existing businesses will now to need to apply for a license or an exemption.

Response: Money transmitters are financial institutions, and therefore, are not small businesses as defined in Government Code section 11342.610. The definition of small business expressly does not include a financial institution. (Govt. Code, § 11342.610(b)(1).) Thus, the Notice appropriately stated that the proposed regulations will not affect small businesses.

The Notice complied with Government Code section 11346.5(a)(7) because as stated in the Notice, the Department made an initial determination that the proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting businesses.

The Notice complied with Government Code section 11346.5(a)(10) and addresses the requirements therein.

Regarding Sustainable Economies Law Center's contention that many existing businesses will only now need to apply for a license or an exemption as a result of this rulemaking, the Department disagrees. The Money Transmission Act was enacted in January 2011. The Money Transmission Act defines the scope of activities that are subject to regulation. The proposed regulations do not broaden the statutory scope of regulation. In fact, the proposed regulations narrow the scope of regulation by narrowing the definition of "advertising" and "receiving money for transmission" and exempting certain classes of persons and transactions where the Commissioner finds the regulation of such persons or transactions is not necessary and for which the exemption is in the public interest, as permitted by Financial Code section 2011. Thus, an existing business should have sought a license or an exemption in January 2011 if it determined that the Money Transmission Act was applicable to it. This rulemaking action only decreases the number of entities that are subject to the Money Transmission Act.

COMMENT NO. 1 (b): Sustainable Economies Law Center stated that the definition of money transmission in the Financial Code is overly broad and captures small businesses. Sustainable Economies Law Center also stated that not all money transmitters are financial institutions. Sustainable Economies Law Center requested that the definition of money transmission be clarified to exclude: (i) money transmitted in the sale of goods and services and (ii) barter networks that only operate an online platform or accounting system that keeps records of exchanges of goods and services among members, and points are not redeemable for fiat currency.

Response: Money transmitters are financial institutions, and therefore, are not small businesses as defined in Government Code section 11342.610. The definition of small business expressly does not include a financial institution. (Govt. Code, § 11342.610(b)(1).)

The Financial Code provides further support for the fact that money transmitters are financial institutions. Financial Code Section 99 provides that Division 1.2 (commencing with section 2000 of the Financial Code, the Money Transmission Act), among other divisions administered by the Department, "shall be known . . . as the 'Financial Institutions Law.'"

Financial Code section 2001 underscores the Legislature's finding that money transmitters are financial institutions. Section 2001 provides:

"The Legislature finds and declares all of the following:

(a) Money transmission businesses conduct a significant amount of business in this state and technological advances are occurring in the provision of money transmission services, which have expanded money transmission to include the use of mobile applications, alternative point of sale systems, and other consumer

payment systems.

(b) Persons who use money transmission businesses in this state use those businesses for, among other purposes, paying for the necessities of life and transmitting money to family members.

(c) The failure of money transmission businesses to fulfill their obligations would cause loss to consumers, disrupt the payments mechanism in this state, undermine public confidence in financial institutions doing business in this state, and adversely affect the health, safety, and general welfare of persons in this state.

(d) To protect the interests of consumers of money transmission businesses in this state, to maintain public confidence in financial institutions doing business in this state, and to preserve the health, safety, and general welfare of the people of this state, it is necessary to regulate money transmission businesses in this state.” (Emphasis added.)

The Legislature expressly recognized that the conduct of money transmission businesses have a direct impact to public confidence in financial institutions. This is because money transmission businesses are financial institutions. Therefore, the Legislature declared that it is necessary to regulate money transmission businesses in this state.

Regarding Sustainable Economies Law Center’s request to exclude money transmitted in the sale of goods and services from the definition of money transmission, this comment has been resolved by the passage of Assembly Bill number 2209. Assembly Bill number 2209 amended the Money Transmission Act, effective January 1, 2015, to add, among other things, a new exemption from the Money Transmission Act. Financial Code section 2010(l) now exempts a transaction in which the recipient of the money or other monetary value is an agent of the payee pursuant to a preexisting written contract and delivery of the money or other monetary value to the agent satisfies the payor’s obligation to the payee. A payee means the provider of goods or services, who is owed payment of money or other monetary value from the payor for the goods or services. A payor means the recipient of goods or services, who owes payment of money or monetary value to the payee for the goods or services. Because Financial Code section 2010 now provides for an exemption for agents of payee, it is unnecessary to exempt such transactions by regulation.

Regarding Sustainable Economies Law Center’s request to exclude barter networks, the Department has previously determined that the role of a commercial barter exchange as a record keeper of trade credits does not constitute “receiving money for transmission,” as defined in Financial Code section 2003(s). A barter exchange does not “receive” any trade credits; it merely acts as the bookkeeper for keeping track of trade credits that members accumulate.

A commercial barter exchange also does not meet the definition of an “issuer” of stored value, as defined in Financial Code section 2003(k). “Issuer” with regard to stored value means “the entity that is liable to the holder of the stored value and has undertaken or is

obligated to pay the stored value.” Because a barter exchange is not liable to the members for the value of their trade credits, and it has not undertaken nor or is it obligated to pay the trade credits; a barter exchange is therefore not an “issuer” of stored value. Financial Code section 2003(v) defines “stored value” to mean monetary value representing a claim against the issuer that is stored on an electronic or digital medium, and that is a means of redemption for money or monetary value or payment for goods or services. Because a barter exchange is not an issuer of the trade credits, the trade credits do not represent a claim against the barter exchange. Thus, trade credits do not meet the definition of “stored value.”

Because commercial barter exchanges, by acting as third party record keepers, are not engaged in: (1) “receiving money for transmission” as defined in Financial Code Section 2003(s); or (2) “issuing or selling stored value” as defined in Financial Code Section 2003(v), they are not subject to the Money Transmission Act. Therefore, it is unnecessary to exempt barter exchanges from the Money Transmission Act.

COMMENT NO. 1 (c): Sustainable Economies Law Center stated that the statutes and regulations under the Money Transmission Act would subject thousands of businesses to regulation. Sustainable Economies Law Center requested that Section 80.3002 be amended to include the following categorical exemptions from the Money Transmission Act: (i) social welfare organizations exempt from taxation under Internal Revenue Code section 501(c)(4) or California Revenue & Taxation Code Section 23701(f); (ii) entities with small annual volume of transactions with a total value of \$1 million per year; (iii) nonprofit mutual benefit corporations and consumer cooperative corporations with a total value of money transmitted of \$10 million or less per year; (iv) entities that meet the definition of small business under Government Code section 11342.610.

Response: The Department has decided not to accommodate this comment for the following reasons. The Money Transmission Act defines the scope of activities that are subject to regulation. The proposed regulations do not broaden the statutory scope of regulation. Rather, the proposed regulations narrow the scope of regulation to exempt certain classes of persons and transactions where the Commissioner finds the regulation of such persons or transactions is not necessary and for which the exemption is in the public interest, as permitted by Financial Code section 2011.

- (i) Sustainable Economies Law Center requested that social welfare organizations (501(c)(4) organizations), be exempt for the same reasons that the Department proposes to exempt 501(c)(3) public benefit nonprofits. However, 501(c)(4) organizations are different from 501(c)(3) public benefit nonprofits. Unlike 501(c)(3) public benefit nonprofits, 501(c)(4) organizations are not required to get Internal Revenue Service approval of their tax-exempt status. Thus, 501(c)(3) public benefit nonprofits are subject to oversight by the Internal Revenue Service in order to maintain its exempt status, whereas, 501(c)(4) organizations are not necessarily subject to the same oversight. In addition, 501(c)(3) public benefit nonprofits may not be an action organization, i.e., they are prohibited from engaging in any

political activity and may not attempt to influence legislation as a substantial part of its activities or participate in any campaign activity for or against political candidates. In contrast, 501(c)(4) organizations can engage in lobbying and political campaign activity. Because of these differing characteristics, the Department has decided not to exempt 501(c)(4) organizations from the Money Transmission Act.

- (ii) Sustainable Economies Law Center requested that entities with small annual volume of transactions with a total value of \$1 million per year be exempt because they pose a small risk of causing substantial harm to consumers, and they cannot afford to be licensed. The Department disagrees that small transaction volume should be the basis for an exemption. When it passed the Money Transmission Act and its amendments, the Legislature did not include any exemption based on the volume or value of transmission activity. In fact, as stated in Financial Code section 2001, the Legislature found that persons who use money transmission businesses in this state use those businesses for paying for the necessities of life and transmitting money to family members; the failure of money transmission businesses to fulfill their obligations would cause loss to consumers and adversely affect the health, safety, and general welfare of persons in this state; and to protect the interests of consumers and to preserve the health, safety, and general welfare of the people of this state, it is necessary to regulate money transmission businesses in this state.

Based on the legislative findings, the Department interprets the purpose of the Money Transmission Act to be safeguarding consumers who entrust their money to other people by regulating such activity. Small transaction volume alone does not ensure that consumers will be protected in the absence of regulation. Furthermore, the fact that such entities cannot afford to comply with regulation underscores the potential risk of harm to consumers because such entities likely would not have the necessary capital and operational controls in place to ensure the successful completion of transactions. Thus, the Department declines to exempt entities with small annual volume of transactions with a total value of \$1 million per year from the Money Transmission Act.

- (iii) Sustainable Economies Law Center requested that nonprofit mutual benefit corporations and consumer cooperative corporations with a total value of money transmitted of \$10 million or less per year be exempt because the moderate volume of transactions reduces the scale of potential harm and because consumers can protect their interests through due process mechanisms imposed by the California Corporations Code. The Department declines to exempt such entities for the same reasons explained in subsection (ii) above. The Legislature intended the Money Transmission Act to regulate entities who receive or hold other people's money. Consumers should not be required to protect their own interests

through general due process mechanisms when the Money Transmission Act was enacted to specifically regulate money transmission activity.

- (iv) Sustainable Economies Law Center requested that entities that meet the definition of small business under Government Code section 11342.610 be exempt they pose less risk of causing substantial harm to consumers, and they cannot afford to be licensed. The Department declines to exempt such entities for the same reasons explained in subsection (ii) above. Furthermore, as stated in the response to Comment No. 1(b), money transmitters are financial institutions, and therefore, are not small businesses as defined in Government Code section 11342.610.

COMMENT NO. 1 (d): Sustainable Economies Law Center stated that in order to allow businesses to continue their operations or commence operations quickly, Section 80.3002 should be amended to require that the Commissioner issue a determination within 30 days of receiving a letter requesting an order of exemption from licensing under the Money Transmission Act.

Response: The Department has decided not to accommodate this comment because requiring approval of any request within 30 days may have negative consequences for consumers. The Department endeavors to review requests for exemptions in a timely manner. However, in some cases, the Department may not be able to make a determination because the applicant has not provided complete information or additional information is needed to complete the review, or the applicant has not responded timely to the Department's request for information. To require the Department to make a determination within 30 days of a receiving a request, which may be before the Department has received complete information or had an opportunity to complete its review of the request, would likely adversely affect the Department's administration of the Money Transmission Act and impair its responsibility to protect consumers.

COMMENT NO. 1 (e): Sustainable Economies Law Center requested that the Department waive certain application requirements for a license for applicants engaging in a moderate annual volume of transactions. Sustainable Economies Law Center defined moderate annual volume applicants as: (i) entities with a total value of money transmitted of \$20 million or less per year and (ii) nonprofit mutual benefit corporations and consumer cooperative corporations with a total value of money transmitted of \$40 million or less per year. Sustainable Economies Law Center stated entities engaging in moderate volume of transactions pose a low risk to consumers and that the Money Transmission Act was designed for large companies. Sustainable Economies Law Center requested that the following application requirements be waived for moderate annual volume applicants:

- (i) Information related to banking and business references
- (ii) Information related to compliance with federal antimoney laundering laws, including the U.S. Patriot Act and the Bank Secrecy Act.
- (iii) Confidential resume and a current personal financial statement of

- directors, officers, and control persons.
- (iv) Information regarding their deposit and credit relationships with financial institutions.
- (v) A list of any criminal convictions and material litigation in the last 10 years.
- (vi) Information about prior indebtedness to the applicant by its associates, directors, and officers.
- (vii) Fingerprints and background checks for officers, directors, and other control persons.
- (viii) Background reports of control persons who are not residents of the United States.
- (ix) Certificate of good standing of the entity issued by the California Secretary of State.
- (x) Documentation to support the value of any asset totaling more than 10% of total assets.
- (xi) Information Regarding Office of Foreign Assets Control compliance.

Sustainable Economies Law Center also requested that Section 80.4111(f) be revised to clarify that none of the financial statements called for in that section must be audited.

Response: The Department has decided not to accommodate this comment. Financial Code section 2033 requires the Commissioner to make the following findings in order approve an application for a license:

- “(b)(1) The applicant has adequate tangible shareholders’ equity, as specified in Section 2040 to engage in the business of money transmission and the financial condition of the applicant is otherwise such that it will be safe and sound for the applicant to engage in the business of money transmission.
- (2) 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.
- (3) The applicant is competent to engage in the business of money transmission.
- (4) The applicant’s plan for engaging in the business of money transmission affords reasonable promise of successful operation.
- (5) It is reasonable to believe that the applicant, if licensed, will engage in the business of money transmission and will comply with all applicable provisions of this division and of any regulation or order issued under this division.
- (c) The commissioner shall deny an application for a license if he or she finds, after notice and a hearing, that the requirements of subdivision (b) have not been satisfied.”

The information called for in sections (i) and (iii) – (viii) as summarized in Comment No. 1 (e), enables the Commissioner to evaluate whether an applicant is of good character and sound financial standing and is competent to engage in the business of money transmission, as required by Financial Code sections 2033(b)(2) and (3).

The information called for in sections (ii) and (ix) – (xi) enables the Commissioner to

evaluate whether the applicant will comply with all applicable laws, as required by Financial Code section 2033(b)(5).

The information called for in section (x) enables the Commissioner to evaluate whether the financial condition of the applicant is such that it will be safe and sound for the applicant to engage in the business of money transmission, as required by Financial Code section 2033(b)(1).

Because the law requires the Commissioner to make specified findings to approve or deny an application for a license, the Department cannot waive the application requirements requested by Sustainable Economies Law Center.

With regard to Sustainable Economies Law Center's request that Section 80.4111(f) be revised to clarify that none of the financial statements called for in that section must be audited, the Department has decided not to accommodate this comment. Financial Code section 2032(16) requires a copy of the applicant's audited financial statements for the most recent year and, if available, the prior two years. This information is necessary to enable the Commissioner to determine whether the financial condition of the applicant is such that it will be safe and sound for the applicant to engage in the business of money transmission, as required by Financial Code section 2033(b)(1). Thus, the Department has determined that an applicant must submit audited financial statements, and clarification of Section 80.4111(f) is not warranted.

Lastly, the Department disagrees with Sustainable Economies Law Center's contention that the Money Transmission Act was designed for large companies. Based on the legislative findings, the Department interprets the purpose of the Money Transmission Act to be safeguarding consumers who entrust their money to other people by regulating such activity. The Money Transmission Act does not limit the scope of regulation to only large companies.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PERIOD THE MODIFIED TEXT WAS MADE AVAILABLE TO THE PUBLIC, FEBRUARY 19, 2015 THROUGH MARCH 6, 2015 [Government Code section 11346.9, subdivision (a)(3)]

The modified text was made available to the public for comment from February 19, 2015 through March 6, 2015. No comments were received.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PERIOD THE MODIFIED TEXT WAS MADE AVAILABLE TO THE PUBLIC, MAY 20, 2015 THROUGH JUNE 4, 2015 [Government Code section 11346.9, subdivision (a)(3)]

COMMENT NO. 1: Comment letters were received from GreenPath, Inc.; Jonathan Pompan on behalf of Financial Education and Counseling Alliance; and Zynda Sellers on behalf of Money Management International. All of these letters indicated support for the proposed regulations that exempt from the Money Transmission Act: (i) 501(c)(3) organizations and (ii) nonprofit community service organizations that meet all of the

criteria in Financial Code section 12104 of the Check Sellers, Bill Payers and Proraters Law.

Response: The Department agrees with this comment and has retained exemptions from the Money Transmission Act for: (i) 501(c)(3) organizations and (ii) nonprofit community service organizations that meet all of the criteria in Financial Code Section 12104 of the Check Sellers, Bill Payers and Proraters Law.

ALTERNATIVES THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES [Government Code section 11346.9, subdivision (a)(5)]

Money transmitters are not small businesses under Government Code section 11342.610, subdivision (b), and therefore no alternatives would lessen the impact of the proposed regulations on small businesses.

ALTERNATIVES DETERMINATION [Government Code section 11346.9, subdivision (a)(4)]

The Department has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purposes for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The amendments adopted by the Department are the only regulatory provisions identified by the Department that accomplish the goal of protecting the interests of consumers and preserving the health, safety, and general welfare of the people of this state, through the adequate regulation of money transmission businesses in this state. Except as set forth and discussed in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to the Department's attention.

Non-Duplication Standard [Title 1, California Code of Regulations, Section 12, subdivision (b)(1)]

Some of the proposed regulations duplicate state statutes which are cited as authority or reference for the proposed regulations. The duplication is necessary to satisfy the clarity standard of Government Code section 11349.1, subdivision (a)(3). Specifically, the rules concerning requirements for an application for a money transmitter license, related to an applicant's history and business (Section 80.4104); directors, officers and control persons (Section 80.4105); foreign control persons (Section 80.4105.11); corporate matters (Section 80.4106); financial statements (Section 80.4111); and pro forma financial statements (Section 80.4121) include language which repeats or rephrases in whole or in part state statutes for the purpose of assisting money transmitter in understanding the law and identifying the Department's authority to request certain information from them.