

FINAL STATEMENT OF REASONS  
FOR THE ADOPTION OF RULES UNDER THE  
CALIFORNIA FINANCE LENDERS LAW

As required by Section 11346.2 of the Government Code, the California Corporations Commissioner ("Commissioner") sets forth below the reasons for the adoption of Sections 1409, 1422 and 1423 to Article 2 of Subchapter 6 of Title 10 of the California Code of Regulations (10 C.C.R. Sections 1409, 1422 and 1423).

Under the California Finance Lenders Law ("CFLL"), the Department of Corporations ("Department") licenses and regulates finance lenders and brokers conducting business in this state. The CFLL provides that no person shall engage in the business of a finance lender or broker without obtaining a license from the Commissioner. (Financial Code Section 22100.) The CFLL further provides that the application for a finance lender or broker's license shall be in the form and contain the information that the Commissioner may by rule require. (Financial Code Section 22101, subdivision (a).) 10 C.C.R. Section 1422 contains the Department's "Application for a License Under the California Finance Lenders Law" (Application). This form is used by applicants seeking to become licensed as finance lenders or brokers.

Assembly Bill 1419 (Chapter 196, Statutes of 2005) amended Section 22102 of the Financial Code. Financial Code Section 22102 provides that a licensee seeking to engage in business at a new location may do so upon submitting an application to be adopted by the Commissioner at least 10 days before engaging in business at the new location. The Department's "Short Form Application" (Short Form), for licensees holding one or more licenses seeking to open a new location, is contained in 10 C.C.R. Section 1423.

Assembly Bill 502 (Chapter 425, Statutes of 2005) provides that an applicant must submit a full set of fingerprints and related information to the Department, and pay for the costs of processing the fingerprints. In addition, Senate Bill 970 (Chapter 470, Statutes of 2003) added Section 11077.1 to the California Penal Code. Penal Code Section 11077.1 provides that, commencing July 1, 2005, the Department of Justice (DOJ) may only accept fingerprint images and related information to process requests for criminal offender record information for employment, licensing, certification, custodial child placement, or adoption purposes, if those images and related information are electronically transmitted. Therefore, fingerprint cards received by the DOJ after July 1, 2005 will be returned to the submitting agency for resubmission to the DOJ in the required electronic format. The DOJ will no longer accept fingerprint cards unless a specific need has been demonstrated, or the requestor has been granted an exemption from the electronic submission requirement.

Senate Bill 408 (Chapter 257, Statutes of 2005) provides that questions regarding an individual's criminal history exclude inquiry into minor traffic citations that do not constitute a misdemeanor or felony offense. The Department may deny a license for violations involving controlled substances. The Department obtains information concerning the applicant and other related parties on the Statement of Identity and Questionnaire for the purposes of conducting background investigations.

This regulatory action proposes to amend the Application and Short Form by

requiring consistent information from an applicant, regardless of the applicant's form of business, and to clarify the information being requested in these documents. These amendments will benefit applicants by providing clear and consistent instructions so that the applicants will better understand the information that must be provided. As a result, the Department will benefit from a decrease in processing delays due to incomplete Applications and Short Forms. Further, this action proposes to amend the Application to conform to the changes resulting from Assembly Bill 502, Senate Bill 970, and Senate Bill 408; and to amend the Short Form to conform to the changes resulting from Assembly Bill 1419.

#### Section 1409 (10 C.C.R. Sec. 1409)

Section 1409 currently requires a licensee to file an amendment to the Application in the event of any change of its officers, directors, or partners named in the Application. The Department proposes to require a licensee to provide the amendment within thirty days from the date of the change and to require a licensee to also file an amendment for any change in other persons named in the Application. This change is needed to ensure that the Department receives complete and current information in a timely manner.

#### Section 1422 (10 C.C.R. Sec. 1422)

Information regarding the Department's time periods for processing Applications is being deleted. This change is needed because the Permit Reform Act which required this information was repealed by Statutes of 2003, Chapter 229 (Assembly Bill 1757).

The Department proposes to add instructions for completing the Application in the "Instructions for Completing the Application for a License Under the California Finance Lenders Law (CFLL)." For example, the Department proposes to add detailed information in the instructions regarding the fingerprint requirements and guidance to entity-owners concerning the Statement of Identity and Questionnaire. This change is necessary to assist the applicant in completing the Application correctly and completely which will in turn reduce application filing deficiencies.

The Department also proposes to add the "CFLL Application Checklist" as part of the instructions for completing the Application. This checklist lists the documents required to be completed by type of applicant. This change is needed to further clarify for the applicant the information required.

The first paragraph requires the applicant to pay for the cost of processing fingerprints. This amendment is necessary to conform to Assembly Bill 502 as discussed above.

The Department proposes several general technical, editing, and formatting changes throughout the Application to make the required information consistent for all types of applicants, and to make the Application easier to understand and to complete. Among other things, the Department is renumbering the questions into sub-categories when the questions ask for multiple or different kinds of information. For example, question number 4 currently requires an applicant who applies as an individual to

provide different kinds of information. The Department proposes to add “sole proprietor” to “individual” in question number 4 and to subdivide the question into question numbers 4.a., 4.b and 4.c. The Department also proposes to add a box for the applicant to check in question number 5.b. to indicate if a general partner is a managing partner. This change is needed because question number 5 of the current Application does not clearly indicate how to provide this information. In addition, the Department proposes to rewrite the text of several questions so that they more clearly identify the type of information required. Further, the Department proposes to make additional clarifying changes such as deleting references to Financial Code sections in the Application and appropriately moving these references to the instructions discussed above. This change is needed to streamline the Application to reduce the amount of time required to complete it.

Question numbers 1 through 6 require all types of applicants to provide similar identifying information about the applicant, and the form and location of the applicant’s business, regardless of the organizational structure of the business. These changes are necessary to ensure that the Department receives consistent information about the applicant’s business to adequately evaluate the applicant’s suitability for licensure and to identify the party authorized to accept legal service on the applicant’s behalf.

The Department proposes to expand the categories of business types listed in item numbers 2 and 6 to include, for example, joint ventures and associations. This change is needed to properly reflect the types of entities that may seek licensure under the CFLL.

The Application currently requires the applicant to provide details concerning any administrative actions in question number 7. The Department proposes to also require the applicant to provide this same information for any criminal action and any civil action involving dishonesty, fraud or deceit. This change is necessary for the Department to identify whether there is an appropriate basis for denying the application pursuant to Financial Code Section 22109. In addition, the Department proposes to change the method of providing the details of any action from a narrative response to requiring the applicant to provide specific information. This change is needed to ensure that the applicant provides the information needed for the Department to determine suitability for licensure, and to eliminate or reduce requests for additional information.

Question number 8 currently requires the applicant to provide information concerning other activities at the business location and question number 10 requires the applicant to disclose details of its business operations. The Department proposes to clarify the information being requested by providing more descriptive information in the questions and by changing the format of these questions. These changes are necessary to ensure that the applicant provides information that is complete, correct and responsive to the question.

The Application currently requires the applicant to agree to certain provisions regarding the Department’s examination of out-of-state licensees in question number 11. The Department proposes to appropriately move this representation to the Execution Section with all of the other representations to improve the organization and readability of the Application.

Exhibit H.2. of the current Application requires an applicant who applies as a domestic corporation to provide documentation proving that its securities are properly qualified in California. The Department proposes to delete Exhibit H.2. and to instead add a new question number 11 to the Application which requires all applicants to affirmatively indicate whether the offer and sale of securities have been qualified in California. This change is necessary to ensure that the licensure requirements are properly applied to all applicants.

The instructions to Exhibit C in the Application require the applicant to provide the fingerprint information in accordance with California Penal Code Section 11077.1. This change is necessary to conform to the changes resulting from Senate Bill 970 and Assembly Bill 502 as discussed above. In addition, the instructions to Exhibit C require each person named in item numbers 4, 5, and 6 of the Application to complete a Statement of Identity and Questionnaire. The Department proposes to amend the question to instead require each "individual" to complete the questionnaire because the questionnaire applies to individuals only and not entities. This change is needed to clarify who needs to complete the Statement of Identity and Questionnaire.

The current Application requires applicants who are applying as individuals or foreign entities to provide a completed consent to service of process form. The Department proposes to delete this requirement in Exhibits D, I and K of the current Application and to instead require this information in the form of a representation from the applicant in the Execution Section. This change is necessary to streamline the application by limiting the filing of additional forms.

Exhibit E correctly instructs the applicant to return the specified form to the Department while the instructions to Exhibit E incorrectly directs the applicant to retain it. The Department proposes to delete the incorrect instruction contained in the instructions to Exhibit E. This change is needed to correct the inconsistency.

The Application currently requires the applicant to provide in Exhibit F specific documentation as proof that the fictitious business name has been properly filed. The Department proposes to change Exhibit F to instead require the applicant to provide a copy of the Fictitious Business Name Statement only and to indicate the name of the county in which the fictitious business name is filed in question number 1.c of the Application. This change is necessary to limit the information required to information that better determines the applicant's suitability for licensure.

Exhibit G of the current Application requires the applicant to provide copies of proposed advertising. The Department proposes to delete this requirement because it does not provide relevant information in determining the applicant's suitability for licensure.

Exhibit H of the current Application requires applicants applying as domestic corporations to provide additional specified information. The Department proposes to change Exhibit H to Exhibit G which will now apply to all corporate applicants, and to delete the requirement that the Secretary of State's certification is executed not more than sixty days before filing the Application. This change is needed to facilitate the

applicant's ability to comply with the Application filing requirements in a timely manner.

The Department proposes to add a new Exhibit I that requires applicants applying as general partnerships to provide a copy of the original partnership agreement. This information is necessary for the Department to use in verifying other information provided in the Application.

Exhibit I of the current Application requires applicants applying as foreign corporations to provide additional specified information. The Department proposes to change Exhibit I to Exhibit H, to delete the requirement that the Secretary of State's certification be executed not more than sixty days before filing the application, and to delete the requirement that the applicant provide the name and address of the principal agent. These changes are needed to facilitate the applicant's ability to comply with the Application filing requirements in a timely manner and to ensure that the Department is requiring necessary information only.

Exhibit J of the current Application requires an applicant applying as a domestic trust, limited partnership or limited liability company to submit additional specified information. In Exhibit K of the current Application, the Department requires an applicant applying as a foreign trust, limited partnership or limited liability company to also submit additional specified information. The Department proposes to change Exhibit J to require both domestic and foreign limited partnerships and limited liability companies to provide a certificate from the Secretary of State. In addition, the Department proposes to change Exhibit K to require foreign limited partnerships and limited liability companies to also provide a certificate from the California Secretary of State. These changes are needed to facilitate the applicant's ability to comply with the application filing requirements in a timely manner.

Exhibit L of the current Application requires the applicant to make certain representations concerning its knowledge of the CFLL and to agree to comply with various CFLL requirements. The Department proposes to delete Exhibit L and to move the information contained in Exhibit L to the Execution Section. These changes are needed to consolidate the Application and to reduce the amount of time it takes an applicant to complete the Application.

The Execution Section of the current Application requires the applicant to indicate the details of a contact person and to agree to comply with the requirements of the CFLL. The Department proposes to expand the Execution Section to include the applicant's agreement to the consent to service of process provisions and to the examination requirements for out-of-state licensees as discussed above. The Department also proposes to include additional CFLL requirements to ensure completeness of the information and to require an applicant to keep and maintain records for 36 months (rather than 24 months) from the date of final entry to conform to Financial Code Section 22517. In addition, the Department proposes to require the applicant's representation that it is not an operating subsidiary of a federally chartered financial institution. This change is needed to assist the Department in ensuring that

the applicant is not exempt under the CFLL. Further, the Department proposes to renumber the representations to improve readability.

Finally, various minor and nonsubstantive changes related to grammar, editing, and punctuation are made throughout 10 C.C.R. Section 1422. These changes are necessary to ensure a clear understanding of the information required and to conform to the requirements of the English language.

#### Section 1422 (10 C.C.R. Sec. 1422) – Statement of Identity and Questionnaire

Pursuant to Financial Code Section 22105, applicants must provide information on the applicant and other related parties so that the Department can conduct background investigations. The Department obtains this information on the Statement of Identity and Questionnaire (SIQ).

The Department proposes to increase the information requested concerning the individual's personal information to include the individual's email address and to clarify the information that the Department is seeking in "Hours of Employment" by providing an example of the specific information. In addition, the Department proposes to require the individual to affirmatively state if he/she does not have a California driver's license and to require the individual to provide zip codes for current and past residence addresses. This information is needed to enable the Department to correctly identify the individual and to ensure that the Department obtains complete information to perform an adequate background investigation on the individual.

Question number 3 currently requires information concerning whether the individual has ever been named in a restraining order related to employment. The Department proposes to renumber this question to question number 3.a. and to require the individual to also provide a copy of any order, judgment, or decree related to that order. In addition, the Department proposes to add question number 3.b. which requires the individual to provide information on regulatory violations. This information is necessary in evaluating the background of the individual because certain regulatory violations are a basis for denying an application for licensure.

Question number 4 currently requires the individual to disclose information concerning past licenses. The Department proposes to renumber the question to question 4.b. and to require the individual to also provide a copy of any settlement related to the license. In addition, the Department proposes to add question number 4.a. which requires the individual to provide information on current licenses held in any state. This information is needed to ensure that the Department obtains complete information to perform an adequate background investigation on the individual.

Question number 5 currently requires the individual to disclose misdemeanor or felony convictions. The Department proposes to require the individual to also provide a copy of any order related to that conviction and to eliminate the need for the individual to provide information on minor traffic violations that do not constitute a misdemeanor or felony. In addition, if the conviction involved Section 23152(a) of the Vehicle Code, the Department proposes to require the individual to provide a written declaration stating whether the conviction involved drugs. These proposed changes are needed to

conform to Senate Bill 408 as discussed above. Further, because the Department may deny a license for violations involving controlled substances, the written declaration is needed so that the Department can timely determine the basis for the conviction (Financial Code Section 17414.1(b)(7)).

Question number 6 currently requires the individual to disclose information concerning certain civil court actions. The Department proposes to require the individual to also provide a copy of any order related to that action. This information is needed to enable the Department to adequately investigate the individual's background.

Question number 10 currently requires the individual to disclose information on any business done under a fictitious business name. The Department proposes to make clarifying changes by providing descriptive information to make the question more understandable.

The Verification Section currently requires the individual to affirm the information provided in the SIQ. The Department proposes to amend the language to require the individual to affirm that he/she has not omitted any information. In addition, the Department proposes to replace technical words such as "declarant" and "affiant" with "individual". These changes are needed to simplify the form and the information requested, and to ensure that the information is complete.

Finally, the Department proposes to make other editing and form related changes such as expanding the size of columns to accommodate the type of information requested and adding a header to each page of the form. These changes are necessary to make the form more user-friendly.

#### Section 1423 (10 C.C.R. Sec. 1423)

Subsection (a) provides that a licensee seeking an additional location license should use the form prescribed by this subsection (b). This change is necessary to properly reflect the new subsection (b), which contains the "Short Form Application".

Subsection (b) contains the "Short Form Application". This change is necessary to conform to Assembly Bill 1419 as discussed above.

The Department proposes to add instructions for completing the Short Form in the "Instructions for Completing the Short Form Application for a License under the California Finance Lenders Law (CFLL)." For example, the Department proposes to add detailed information regarding the filing information for the Short Form and use of fictitious business names for new locations. This change is necessary to assist the applicant in completing the Short Form correctly and completely which will in turn reduce filing deficiencies.

The first section of the "Short Form Application" requesting information on the applicant's filing status (e.g., broker or lender) is being deleted. This change is necessary to avoid collecting information not needed by the Department.

The Department proposes to add filing information before question number 1. This information is needed to ensure that applicants understand the due date for filing the Short Form with the Department and the types of persons who need to obtain a license.

Question number 1 requires the applicant to provide its name and fictitious business name, and sets forth instructions regarding the filing and use of a fictitious business name. This change is necessary to ensure compliance with Financial Code Section 22102(e) and to avoid the use of unapproved business names.

Question number 3 requires the applicant to provide the name and information regarding the individual in charge of the new location. This change is necessary to ensure that each new location has one person in charge who is knowledgeable regarding CPLL laws and regulations.

Question number 4 requires the applicant to state whether there has been or will be any change in the applicant's plan of business of making or brokering loans or other business. This change is necessary to ensure that applicants provide the Department with the information necessary to determine whether the new location is eligible for the same type of license as the original license.

Question number 6 requires the applicant to provide the Department with the name and contact information of a responsible officer or compliance person from the main office of the applicant as the contact person regarding the application. This change is necessary to ensure that the Department's contact is a duly authorized representative of the applicant.

The section before the signature block requires the applicant to agree to provisions regarding filing an amendment. The Department proposes to require the applicant to also agree to provide the amendment within thirty days from the date of change and to file an amendment for any change in other persons named in the application. In addition, the Department proposes to require the applicant to agree to certain provisions regarding the Department's examination of out-of-state licensees. These changes are necessary to ensure compliance with 10 C.C.R. Section 1409 and Financial Code Section 22106, and to ensure that the applicant understands the examination requirements.

The signature block requires that the application must be signed by a person who already has a Statement of Identity and Questionnaire on file with the Department. This change is necessary to ensure that the person signing the application is an authorized officer of the original licensee.

## DETERMINATIONS

The Commissioner has determined that the adoption of the regulation does not impose a mandate on local agencies or school districts, which requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.



## ALTERNATIVES CONSIDERED

No alternative considered by the Department would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons, or would lessen any adverse impact on small businesses.

## ADDENDUM REGARDING HEARINGS

No request for hearing was received during the first 45-day public comment period, which ended on November 13, 2006. Accordingly, no hearing was scheduled or held.

No request for hearing was received during the second 45-day public comment period, which ended on June 11, 2007. Therefore, no public hearing was scheduled or held.

## PUBLIC COMMENTS RECEIVED DURING THE FIRST 45-DAY COMMENT PERIOD

COMMENTOR: Letter dated October 31, 2006, from Bruce Weiner with Money2Go Inc.

COMMENT 1: The commentor stated that item number 10 of the Application requesting minimum loan amounts and types of collateral is ambiguous. The commentor suggested a reporting format to simplify the information requested.

RESPONSE: The Department proposes to adopt the commentor's suggestion in its entirety in question number 10.a. of the Application.

COMMENTOR: Letter dated November 10, 2006, from Kamyar Shabani with Shabani & Shabani LLP.

COMMENT 1: The commentor stated that requiring passive investors of a lending entity and officials of institutional investors to provide a Statement of Identity and Questionnaire is both burdensome and contrary to the Legislature's intent in establishing the California Finance Lenders Law. The commentor suggested that the Statement of Identity and Questionnaire should be required only in specified situations.

RESPONSE: The Department proposes to amend Exhibit C of the "Instructions for Completing the Application for a License under the California Finance Lenders Law (CFLL)" to clarify the circumstances under which a Statement of Identity and Questionnaire is required.

## PUBLIC COMMENTS RECEIVED DURING THE **SECOND** 45-DAY COMMENT PERIOD

No written comments were received during the second 45-day public comment period.

Although there were no changes to the proposed regulations from public comments during the second 45-day public comment period, the Department made conforming

changes to ensure consistency with the existing statutes and rules. Specifically, the Department proposes to add instructions to the Short Form in 10 C.C.R. Section 1423. In addition, as a result of the U. S. Supreme Court's recent decision concerning state regulatory authority in *Watters v. Wachovia Bank, N.A.* (550 U.S. No. 05-1342 (2007)), the Department proposes in 10 C.C.R. Section 1422 to require the applicant's representation that it is not an operating subsidiary of a federally chartered financial institution. Further, the Department proposes to require the applicant to provide amendments to the Short Form within thirty days from the date of the change in 10 C.C.R. Section 1423. Consequently, on August 15, 2007, these proposed regulations were sent for an additional 15-day public comment period. No additional changes were made to these regulations subsequent to the 15-day public comment period.

#### COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD

No written comments were received during the 15-day public comment period, which ended on August 31, 2007.

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