

NOTICE OF RULEMAKING ACTION

TITLE 10. California Department of Business Oversight

NOTICE IS HEREBY GIVEN [Government Code Section 11346.5, Subdivision (a)(1)]

The Commissioner of Business Oversight (“Commissioner”) proposes to adopt Sections 80.126.10, 80.126.20, 80.126.30, 80.128, 80.128.10, and 80.130 of Title 10 of the California Code of Regulations (“C.C.R.”). These proposed regulations relate to the implementation of the California Money Transmission Act (“MTA”).

AUTHORITY [Government Code section 11346.5, Subdivision (a)(2)]

Section 334 of the Financial Code.

REFERENCE [Government Code Section 113.46.5, subdivision (a)(2)]

Sections 334 and 2010 of the Financial Code.

PUBLIC HEARINGS [Government Code Section 11346.5, Subdivision (a)(17)]

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department’s contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD [Government Code Section 11346.5, Subdivision (a)(15)]

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed as follows:

Regular Mail

Department of Business Oversight
Attn: Pamela Hernandez
One Sansome Street, Suite 600
San Francisco, CA 94104

Electronic Mail

regulations@dbo.ca.gov

Facsimile

(415) 288-8830

Comments may be submitted until 5:00 p.m. on April 20, 2020. If the final day for acceptance of comments is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

INFORMATIVE DIGEST [Government Code Section 11346.5, Subdivision (a)(3)]
Policy Statement and Specific Benefits Anticipated from Regulatory Action [Government Code Section 11346.5, Subdivision (a)(3)(C)].

The objective of the proposed regulations is to adopt rules that clarify the scope of the agent of payee exemption under the Money Transmission Act.

The specific benefits anticipated by this proposed adoption include greater certainty for the money transmitter industry, increased transparency in government and encouragement of public participation in developing regulations meant to protect consumers.

Summary of Existing Laws and Regulations, and Effect of Proposed Action
[Government Code Section 11346.6, Subdivision (a)(3)(A)]

Effective January 1, 2014, the California Legislature enacted AB 2209, which included numerous substantive and technical amendments to the MTA (Financial Code section 2000 et seq.). Among other things, this bill codified Section 2010, subdivision (l) of the Financial Code, which exempts from money transmitter licensing requirements transactions in which an agent is appointed by a payee to receive funds on behalf of the payee. This exemption requires a written agreement between the agent and the payee, establishing that a payor's payment to the agent for payment for goods or services satisfies the payor's payment obligation to the payee. This contractual release protects consumers and other types of payors by preventing the payor from having to pay twice for a good or a service if the agent fails to deliver funds to the payee. AB 2209 defined "payor" as a person owing payment to a payee for a good or a service. AB 2209 defined "payee" as a person who is owed payment from the payor for providing a good or a service.

Existing law includes definitions specific to the MTA. Existing law also provides for statutory exemptions from the MTA as well as exemptions based on a finding by the Commissioner that such action would be in the public interest and that the regulation of such persons or transactions is not necessary.

The effects of these proposed regulations include:

- Clarifying the definitions of the terms "agent of payee," "payor," "payee," "goods or services" and "transaction."
- Establishing that the agent of payee exemption does not apply to stored value transactions.

Existing Federal Regulation or Statute [Government Code Section, 11346.5, Subdivision (a)(3)(B)]

Money transmission is subject to substantial oversight at the state level. There is no comparable, comprehensive federal regulation or statute that applies to money transmitters. To the extent that there are federal regulations that impact money transmitters, this rulemaking will not impact the administration of federal law. The Financial Crimes Enforcement Network (“FinCEN”) is responsible for administering the Bank Secrecy Act (“BSA”), which generally applies to money transmitters. FinCEN’s expansive definition of “money services business” applies to “[a] person wherever located doing business, whether or not on a regular basis or as an organized or licensed business concern, wholly or in substantial part within the United States,” that engages in foreign exchange dealing, check cashing, issuing or selling traveler’s checks or money orders, providing or selling prepaid access and transmitting money. Unless an exemption applies, a business that engages in any of these activities must register with FinCEN as a money services business. FinCEN regulations do not have an agent of payee exemption. However, FinCEN regulations exclude “payment processors” from the definition of a “money transmitter.” The regulations provide that the term “money transmitter” does not include a person that only “acts as a payment processor to facilitate the purchase of, or payment of a bill for, a good or service through a clearance and settlement system by agreement with the creditor or seller.”¹ FinCEN has interpreted the “payment processor exemption” to require only that a transaction involve “a person to whom money was owed either to complete a transaction, or because of a previously incurred debt.”² Because federal money transmitter oversight is completely independent of state licensing or exempt status, the proposed regulations will not impact the administration of federal law.

Existing State Regulations [Government Code Section 11346.5, Subdivision (a)(3)(D)]

The Department has conducted an evaluation of whether the proposed regulations are consistent with existing regulations and has concluded that these regulations are consistent with existing regulations under the MTA. The proposed regulations are applicable only in transactions involving the agent of payee exemption. There are no existing regulations pertaining to the agent of payee exemption. The proposed regulatory action is consistent with the policy considerations expressed by the legislature in the MTA. Thus, the proposed amendments are neither inconsistent nor incompatible with existing state regulations.

FORMS INCORPORATED BY REFERENCE [Title 1, California Code of Regulations, Section 20, Subdivision (c)(3)]

There are no forms incorporated by reference in the proposed regulatory action.

¹ 31 C.F.R. § 1010.100(ff)(5)(ii)(B).

² FIN-2013-R002, Nov. 13, 2013.

DISCLOSURES REGARDING THE PROPOSED ACTION [Government Code Section 11346.5, Subdivision (a)(5) and (6), and (12)(A)]

- Mandate on local agencies and school districts: None
- Cost or savings to any state agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None
- Other nondiscretionary cost or savings imposed on local agencies: None
- Cost or savings in federal funding to the state: None
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None
- Significant effect on housing costs: None

ECONOMIC IMPACT ON BUSINESS [Government Code Section 11346.5, Subdivision (a)(8)]

The Commissioner has made an initial determination that the proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESS [Title 1, California Code of Regulations, Section 4]

The proposed regulations will not affect small business because money transmitters are not a small business within the meaning of Government Code section 11342.610.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS [Government Code Section 11346.5 Subdivision (a)(9)]

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS [Government Code Section 11346.5, Subdivision (a)(10)]

The Department has determined that:

- The proposed action will not create or eliminate jobs within California;
- The proposed action will not create new businesses or eliminate existing businesses within this state;
- The proposed action will not affect the expansion of businesses currently doing business within California; and
- No benefits or adverse impacts to worker safety or to the state's environment are anticipated from this regulatory action.
- The anticipated benefits of this proposed adoption to the citizenry of California include increased transparency in government, encouragement of public participation in developing the rules, and ultimately, increased protections to members of the public who utilize money transmission businesses.

CONSIDERATION OF ALTERNATIVES [Government Code Section 11346.5, Subdivision (a)(13)]

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

AVAILABILITY OF THE NOTICE, STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE [Government Code Section 11346.5, Subdivision (a)(16) and (20), and (b)]

As of the date this notice is published, the rulemaking file consists of this notice, the initial statement of reasons, and the proposed text of the regulation. The proposed text may be obtained at any of the below Department of Business Oversight's Front Counters. The initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available by requesting document **PRO 07-17** from the contact person designated below.

Los Angeles Office

300 S. Spring Street, Suite 15513
Los Angeles, CA 90013-1259

Sacramento Office

1515 K Street, Suite 200
Sacramento, CA 95816-4052

San Diego Office

1350 Front Street, Room 2034
San Diego, CA 92101-3697

San Francisco Office

One Sansome Street, Suite 600
San Francisco, CA 94105-2219

The notice, initial statement of reasons and proposed text are also available on the Department's website at www.dbo.ca.gov. At the top of the page, click the "Laws and Regs" index tab, and under "Division of Financial Institutions" click on the "Rulemaking" link.

As required by the Administrative Procedure Act, the Legal Division maintains the rulemaking file. The rulemaking file is available for public inspection and copying throughout the rulemaking process at the Department of Business Oversight, Law and Policy Division, 1515 K Street, Suite 200, Sacramento, CA 95814.

AVAILABILITY OF CHANGED OR MODIFIED TEXT [Government Code Section 11346.5, Subdivision (a)(18)]

If the Department makes changes which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts, amends or repeals the regulations as revised. A request for a copy of any modified regulation(s)

should be addresses to the contact person designated below. The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS [Government Code Section 11346.6, Subdivision (a)(19)]

Upon its completion, the Final Statement of Reasons will be available, and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONTACT PERSON

All inquiries regarding the proposed regulation may be directed to:
Pamela Hernandez
Counsel
One Sansome Street, Suite 600
San Francisco, CA 95104
Telephone: (415) 263-8514
Email: Pamela.Hernandez@dbo.ca.gov

Dated: February 19, 2020
Sacramento, California