

INITIAL STATEMENT OF REASONS
FOR AMENDMENTS TO REGULATIONS UNDER THE
MONEY TRANSMISSION ACT

As required by Section 11346.2 of the Government Code, the California Department of Business Oversight Commissioner (Commissioner) sets forth below the reasons for the proposed amendments under the California Money Transmission Act (Financial Code Section 2000 et seq.).

The Department of Business Oversight (Department) is proposing changes to regulations that impact money transmitters. The Department is making amendments to Sections 80.1 through 80.9, 80.100, 80.125, 80.126, 80.150 through 80.177, 80.3000, 80.3001, 80.3002, 80.4000 through 80.4313, 80.5000, 80.5200, 80.5201, 80.5300 through 80.5304, 95.2, 95.3, and 95.5030; adoption of Sections 80.125.10, 80.129, 80.158.10, 80.166.10, 80.4100.10, 80.4105.10, 80.4105.11, 80.4118.10, 80.4118.11, 80.5100, 80.5200.1, 80.5210, 80.5304.1, 80.5305, 95.550, and 95.600; and repeal of Sections 80.127, 80.171, 80.4110, 80.4112, 80.4114, 80.4306, 80.4307, and 80.5202, of Title 10 of the California Code of Regulations (C.C.R.).

On July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to form the Department of Business Oversight. The Department of Business Oversight (Department) 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.

SPECIFIC PURPOSE OF REGULATIONS [Government Code Section 11346.2,
Subdivision (b)(1)]

The purpose of these proposed regulations is to implement the Money Transmission Act, and specifically, to clarify definitions, exemptions from the Money Transmission Act, application requirements for a money transmitter license, administrative standards and procedures relating to an application for a license, requirements for consumer disclosures, determination of tangible shareholders' equity, and eligible securities.

Effective January 1, 2011, the Legislature repealed the provisions of the California Financial Code relating to money transmitters, issuers of travelers checks, and sellers of payment instruments and enacted the Money Transmission Act (Financial Code Section 2000 et seq.), which provides for the regulation and licensure by the Commissioner of Business Oversight of persons in the business of money transmission, defined to mean the selling or issuing of payment instruments or stored value and the receiving of money for transmission.

The Money Transmission Act was amended, effective January 1, 2014, requiring the Department to adopt regulations to carry out and implement Sections 2011 and 2040 of the Financial Code.

Existing regulations correspond to the repealed Payment Instruments Law. The proposed regulatory action would update the regulations for the Money Transmission Act, specifically as follows.

Definitions

Definitions would be updated to be consistent with the Money Transmission Act.

Exemptions from the Money Transmission Act

Existing law provides for statutory exemptions from the Money Transmission Act as well as exemptions based on a finding that such action would be in the public interest and that the regulation of such persons or transactions is not necessary. The proposed rulemaking (1) identifies additional categories of exempted persons and transactions and (2) explains the procedure for applying for an exemption and the factors the Department may consider when determining whether to grant an exemption.

Application for License

Existing law specifies certain information to be included in an application for a money transmitter license. The proposed rulemaking would incorporate existing regulations, to the extent they are applicable, which clarify statutory requirements, and would add additional requirements, which is authorized by statute, such as: (1) information related to 10% equity security owners of the applicant; (2) background check information of the applicant; and (3) information related to compliance with regulations of the Office of Foreign Assets Control and the Bank Secrecy Act.

Administrative Standards and Procedures

The proposed rulemaking explains administrative standards and procedures relating to an application for a license. The proposed regulations cover subject matters such as the identification of documents to be filed in connection with the issuance of license; the timing for filing required documents; the time period for which approval of a license is valid; and the procedure for requesting an extension of an approval.

Tangible Shareholders' Equity

Existing law requires a money transmitter licensee to maintain tangible shareholder's equity of two hundred fifty thousand dollars (\$250,000) to five hundred thousand dollars (\$500,000), or more, depending on certain specified factors. The law also requires the Department to adopt regulations to carry out and implement such factors. The proposed rulemaking explains how the Department will consider those factors to determine the required amount of tangible shareholders' equity for a licensee.

Consumer Notices

Existing law mandates certain consumer disclosures and Department review of such disclosures. These disclosures include receipts for money received for transmission, forms of payment instruments, and notices posted in branch offices of a licensee. The notices relate to: (1) the disclosure that payment instruments are not insured by the federal government, the state government, or any other public or private entity; and (2) the consumer complaint procedure. The proposed rulemaking sets forth the procedures

for submitting the required forms of receipts and payment instruments for approval by the Department. The proposed regulations also clarify the circumstances under which notices must be posted in branch office locations.

Eligible Securities

Existing law sets forth categories of securities that are eligible securities and the computation of the value such eligible securities. The law also provides that the Department may declare additional eligible securities if the Department finds such security is of sufficient liquidity and quality to be an eligible security. The proposed rulemaking clarifies existing eligible security categories and adds another category of security to the list of eligible securities and describes how the value of the newly eligible security will be computed.

BENEFITS ANTICIPATED FROM REGULATORY ACTION [Government Code Section 11346.2, Subdivision (b)(1)]

The anticipated benefits include the implementation of the Money Transmission Act, which will establish a transparent application process for licensure of money transmission in California and protect the public by examining the background of all applicants who intend to provide money transmission services to the public. In addition, exemptions from the Money Transmission Act will be addressed. The proposed regulatory action will also clarify tangible shareholders' equity requirements and the factors to be considered in determining whether to increase the amount of tangible shareholders' equity required. Additionally, it will further define the categories of securities which are eligible securities and the computation of the value such eligible securities. The proposed rulemaking would also clarify consumer disclosure requirements.

Furthermore, by adopting the rules and forms in compliance with California's rulemaking procedures and standards, the proposed regulatory action increases transparency in government and encourages public participation in developing the rules.

POTENTIAL FOR ADVERSE ECONOMIC IMPACT ON BUSINESS AND INDIVIDUALS [Government Code Section 11346.3, Subdivision (a)]

The Commissioner has determined that the proposed regulatory action will not have an adverse economic impact or potential for an adverse economic impact on business, including the ability of California businesses to compete with businesses in other states, or individuals. The proposed regulations implement the Money Transmission Act by updating existing regulations based on the repealed Payment Instruments Law.

ECONOMIC IMPACT ASSESSMENT [Government Code Section 11346.3, Subdivision (b)]

The Creation or Elimination of Jobs Within the State

The Commissioner has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California. The application requirements for a license under the Money Transmission Act are substantially the same requirements as for the former Payment Instruments Law and

therefore the proposed regulations should not impact job creation or elimination. The licensing, examination, and other regulatory activities are currently being performed by state staff in the administration of the former Transmission of Money Abroad, Travelers Checks, and Payment Instrument Law statutes, and these same activities will continue to be performed by the same state staff for the Money Transmission Act.

The Creation of New Businesses or the Elimination of Existing Businesses Within the State

The Commissioner has determined that this regulatory proposal will not have a significant impact on the creation of new businesses or the elimination of existing businesses in the State of California because the proposed regulations only apply to licensees and potential licensees under the Money Transmission Act.

The Expansion of Businesses Currently Doing Business Within the State

The Commissioner has determined that this regulatory proposal will not have an impact on the expansion of licensed money transmitters currently doing business in this state because the majority of the proposed regulations relate to application requirements for new licensees. The remaining proposed regulations primarily clarify terms and requirements and therefore should not significantly impact the business of existing money transmitter licensees.

The Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety and the State's Environment

The Commissioner has determined that this regulatory proposal may benefit the health and welfare of California residents because the proposed rulemaking establishes a comprehensive application process for licensure of money transmission in California and therefore protects the public by examining the background of all applicants who intend to provide money transmission services to the public. The regulatory proposal does not benefit worker safety or the state's environment.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS [Government Code Section 11346.2, Subdivision (b)(3)]

There are no reports cited in the Specific Purpose of Regulation section or the Economic Impact Assessment section. The Department of Business Oversight did not rely upon any technical, theoretical, or empirical study, report, or other similar document in proposing this regulatory action.

REASONABLE ALTERNATIVES AND REASONS FOR REJECTING THOSE ALTERNATIVES [Government Code Section 11346.2, Subdivision (b)(5)(A)]

The Department has considered and determined that no reasonable alternative to the regulation has been identified or brought to its attention that would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Initial Statement of Reasons.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES AND REASONS FOR REJECTING THOSE ALTERNATIVES
[Government Code Section 11346.2, Subdivision (b)(5)(B)]

No reasonable alternative considered by the Department or that have otherwise been identified and brought to the attention of the Department would be as effective and less burdensome to affected private persons, or would lessen any adverse impact on small business. Under Government Code Section 11342.610, subdivision (b), a money transmitter is not a small business, and therefore no alternatives would lessen the impact of this rulemaking action on small business.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY OR OTHER EVIDENCE RELIED ON BY AGENCY [Government Code Section 11346.2, Subdivision (b)(6)(A)]

The Department did not rely on any information in determining that the proposed regulatory action will not have a significant adverse economic impact on business. The proposed regulations are necessary to implement the Money Transmission Act.