

REVISED FINAL STATEMENT OF REASONS
FOR THE ADOPTION OF RULES UNDER THE
ESCROW LAW

As required by Section 11346.9 of the Government Code, the California Department of Business Oversight Commissioner (Commissioner) sets forth below the reasons for the adoption of Section 1718.1 to Chapter 3 of Subchapter 9, Article 4 of Title 10 of the California Code of Regulations (10 C.C.R. Section 1718.1).

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 Corporations, such as escrow agents, mortgage loan originators, finance lenders, securities broker-dealers, investment advisers and securities depositories.

UPDATED INFORMATIVE DIGEST [see Government Code section 11346.9(b)]

The proposed regulatory action clarifies the Escrow Law's requirements for a surety bond that, among other things, is required of escrow agents for licensure, by including them in a surety bond form for the purpose of streamlining the escrow agent licensure process. In addition, the proposed regulatory action specifies that notice must be sent to the Department and the Escrow Agents' Fidelity Corporation (EAFC) in the event of: (1) a bond cancellation; (2) a bond withdrawal; (3) non-renewal of a bond; (4) a principal or surety being served with a notice of actions commenced on the bond; or (5) a surety making full or partial payment on the bond. In the instance of a bond cancellation or withdrawal, the regulatory action would require a surety to provide a 30-day written notice of either action to the Department in order for them to be effective. The notices may provide additional opportunities to help resolve any financial issue(s) that may affect an escrow agent's ability to renew a bond.

The Department of Business Oversight amended some of the proposed rules in this action in response to recommendations received during the 45-day comment period.

Surety Bond Form

The Department requires escrow agents to submit a surety bond using a designated form for a specified amount based on state statutes when applying for licensure. While the bond amount and some of the bond form language is specified by statute, the Commissioner is permitted by law to include additional language in the bond form that clarifies what the Department needs from its licensees in order to satisfy the bond requirement.

This regulatory action would incorporate the surety bond form used by the Department into the California Code of Regulations. The bond form contains the most current and accurate statutory requirements. Adding the bond form to the regulations may better enable applicants and escrow agents to access the form and obtain bonds that comply with state licensure requirements.

The rule adopting the surety bond form is necessary to ensure that the Department obtains information needed to make a determination that an applicant meets the surety bond requirements for licensure under the Escrow Law. Financial Code Section 17202 requires an applicant to provide a satisfactory bond to the Commissioner at the same time it files an application for an escrow agent license. The rule is necessary to provide an applicant notice of its obligation to submit a bond as well as the information the bond must include in order for the Department to make a determination it is satisfactory. Sections 17201 and 17400 expressly authorize the Department to create an application form by regulation, and the surety bond form is located in SECTION II, Item 3, of the application, as EXHIBIT E.

Paragraph 1

The information requested in Paragraph 1 of the proposed bond form includes the name of the principal, also known as the applicant, the name of the surety business, also known as the "Surety," and their respective addresses. Financial Code Section 17202 provides that a bond shall run to the state for the use of the state and for any person who has cause against the obligor of the bond under the Escrow Law. Code of Civil Procedure Section 996.410 provides that a beneficiary may enforce the liability on a bond against both a principal and a surety and Section 996.430 further provides that the liability on a bond may be enforced by civil action. Thus, this information is necessary to enable the Department to obtain identifying information about an applicant, its chosen Surety and the locations of their respective businesses for service purposes.

The paragraph contains information stating the Surety is an admitted surety insurer. Insurance Code Section 700 provides that a surety must obtain a Certificate of Authority in order to be admitted to transact insurance in California. Thus, this information is needed to ensure the Department that the Surety is authorized to transact general surety business in California.

Additionally, the paragraph states the bond can be used for the state and any person(s) who has a cause of action against the applicant. This information is necessary to notify the applicant and the Surety for what purposes the bond may be used, as provided in Financial Code Section 17202.

Lastly, the paragraph requests the total aggregate penal sum of the bond. Financial Code Section 17202 specifies the minimum amount a bond must be in order to be satisfactory to the Commissioner when it is initially filed and annually thereafter. The initial bond must minimally be in the amount of \$25,000 and future bonds must be maintained in amounts designated by Section 17202 based on an escrow agent's "previous year's average annual trust fund obligations." This information is necessary

for the Department to determine whether a bond is in an amount that is satisfactory to the Commissioner, as specified in Section 17202.

Paragraph 2

Paragraph 2 states that an applicant has applied to the Commissioner of Business Oversight for a license to engage in business as an escrow agent, and as part of the requirements of licensure under the Escrow Law is required to provide a bond with specified conditions. This paragraph is necessary to acknowledge an applicant's application for a license as an escrow agent and to put an applicant on notice that licensure requires the submission of a surety bond, pursuant to Financial Code Section 17202, which meets the conditions set forth in Section 17203.

Paragraph 3

Paragraph 3 restates the conditions in Financial Code Section 17203 that an applicant and any and all of its agents and employees must agree to comply with in order for its bond to be instated. The Escrow Law requires that a surety bond be conditioned on a licensee: (1) complying with the Escrow Law; (2) appropriately applying all funds it receives; (3) performing all obligations and undertakings required by the Escrow Law; and (4) paying all amounts it may owe to the state or specified person(s) pursuant to the Escrow Law. This information is necessary to give an applicant and/or escrow agent notice of the conditions with which it must agree to comply to have its bond activated.

Paragraph 4

Paragraph 4 is necessary to provide notice to applicants and sureties that the surety bond is subject to specific provisions in the Escrow Law and the Code of Civil Procedure as follows:

Provision 1

Provision 1 states that any person who sustains an injury covered by the bond may bring an action in his or her own name upon the bond for the recovery of damages sustained as a result of the injury, in addition to other remedies. Code of Civil Procedure Section 996.430 provides that the liability on a bond may be enforced by civil action. Additionally, Section 996.460 provides that if a judgment does not exhaust the full amount of a bond it decreases the amount of the bond, but does not discharge the bond. It further provides that the liability on the bond may be enforced thereafter from time to time until the amount of the bond is exhausted. The Escrow Law limits the time frame in which the liability on the bond may be enforced in Section 17205, by prohibiting such actions more than two years from the occurrence of an act or default. This provision is necessary to inform applicants and sureties about a beneficiary's right to bring an action against a bond and the timeframe during which such actions may be brought.

Provision 2

Provision 2 states that the amount of the total aggregate liability for which a surety is liable is the penal amount of the bond. This is a restatement of Section 996.470 of the Code of Civil Procedure that limits the aggregate liability of a surety to the amount specified in the bond. Specifically, it provides that aggregate liability to all persons for all breaches of the condition(s) of a bond is limited to the amount of the bond, except where a surety makes an advance payment on a final judgment, fails to make payment on a claim or only makes a partial payment on a claim. This Section further provides that if a bond is given in an amount greater than the amount required by statute or otherwise, the liability of the surety on the bond is limited to the amount required by statute or otherwise, unless the amount of the bond has been increased voluntarily or by agreement of the parties to satisfy an objection to the bond made in an action or proceeding. This provision is necessary to clarify that a surety's liability is limited to the amount indicated on the bond form, which is the same as the amount of coverage required for an applicant or escrow agent by the Escrow Law, as set forth in Financial Code Section 17202.

Provision 3

Provision 3 references Code of Civil Procedure Sections 996.320 and 996.330 regarding how a surety may cancel or withdraw a bond and when that resulting cancellation or withdrawal would be considered effective respectively. The provision prohibits such actions until a surety provides a 30-day written notice of the action to the Department. It also requires a surety to provide a copy of the notice to the EAFC. This information is necessary to let sureties know what they must do in order to cancel or withdraw a bond.

The purpose of the Escrow Law is to protect members of the public who entrust their money or other assets to independent escrow agents in California. To that end, the surety bond requirement for escrow agents helps protect the public's money and assets by insuring escrow agents against loss of those monies and assets. Requiring a surety bond company to provide notice of a bond cancellation to the Department and the EAFC, prior to a cancellation, may further help ensure the public is reimbursed for any losses and potentially prevent losses in the first place by providing an early indication that an escrow agent is experiencing financial problems.

Currently, the Department receives a notice of a bond cancellation from a surety bond company thirty days prior to a bond cancellation. The notice enables the Department to send out a letter with a reminder of the pending cancellation to each escrow agent licensee with adequate time to renew its bond. A notice of cancellation could be an indicator of several things, including but not limited to: (1) an escrow company is experiencing a financial problem and cannot afford the bond premium; (2) an escrow company is delaying its renewal because it is seeking a more affordable premium; (3) an escrow company simply allows a bond to expire and in turn the bond company does not desire to renew it; (4) an escrow company is not sure if it wants to renew its bond due to poor business prospects; (5) an escrow company may not be able to renew a bond because the surety bond company had to pay out for it in the past; or (6) due to the economy, an escrow company may not be able to renew a surety bond because its

surety bond company rejected the renewal request or charged a higher premium based on the financial statements of the escrow agent's owners. Notably, many of the escrow companies that are in these situations and receive bond cancellation notices are able to reinstate them prior to a cancellation taking effect.

If an escrow agent's surety bond expires, the Department sends an Order to Cease New Business to the escrow agent. The Order allows a company to continue to work on or close any open escrows, including receiving funds to do so, but prevents it from opening any new escrows until its bond is reinstated. The Department provides a copy of the Order to Cease New Business to the EAFC. Once a bond is reinstated, the Department sets aside the Order to Cease New Business.

Due to the current economy and housing crisis, the need for escrow business has declined and in turn caused many companies to reduce expenditures and in some cases struggle financially. As a result, a greater number of companies have submitted claims to the EAFC. However, in many of these cases the companies have still been able to reinstate their bonds prior to a bond cancellation taking effect.

The requirement to provide notice to the Department is necessary to put the Department on alert that a licensee may be without a license in 30 days and that the licensee may have done something to cause the cancellation or withdrawal. It is necessary to allow time for the Department to communicate with a licensee to encourage it to renew or obtain a new bond before the existing one expires to avoid being in violation of the Escrow Law and having its license suspended, pursuant to Financial Code Section 17423, or revoked, pursuant to Financial Code Section 17608. The notice is also needed to allow time for the Department to investigate why the bond is being cancelled or withdrawn, pursuant to Financial Code Section 17601, in case it was due to a violation of Escrow Law.

The requirement to provide a copy of the notice to the EAFC is necessary to enable the EAFC to do similar communications with and investigatory procedures of escrow agents, pursuant to Financial Code Section 17336, at an earlier time. Receiving a copy of the notice would enable it to conduct a timelier "mini" audit on an escrow agent licensee to determine if it is experiencing financial problems that may jeopardize its bond renewal. If an audit indicates an escrow agent is experiencing a financial problem, the information can help the EAFC guard against a claim.

Since Section 17336 requires the EAFC to report the results and recommendations of all of its investigations to the Commissioner, the Department may obtain helpful information from the EAFC, at an earlier time. The Department, in turn, could use the information for subsequent action, such as an Order to Cease New Business that may encourage a prompt renewal of the bond. Currently, the EAFC usually receives notice of such actions when the Department serves an escrow agent with an Order to Cease New Business. Enabling the EAFC to look into pending bond cancellations and withdrawals at an earlier time is necessary to help the Department contain or guard against Escrow Law violations, especially ones that result in trust fund losses.

This regulatory action would codify the Department's current practice of requiring surety bond companies to provide a notice of a bond cancellation thirty days prior to the

cancellation and add a new requirement to require surety bond companies to provide the same notice to the EAFC. Adding this requirement to the regulations may reduce or prevent some claims against the EAFC.

A non-renewal is essentially treated the same way as a cancellation by the Department. Thus advance notice of a non-renewal would be equally helpful to the Department and the EAFC.

Provision 4

Provision 4 requires an applicant and or a surety of the bond to provide written notice to the Department if either one is served with notice of an action against them under the bond. This notice is required to enable the Department to regulate and enforce Financial Code Section 17206, which (1) authorizes the Commissioner to require the filing of a new bond when an action is commenced on an escrow agent's bond; (2) requires the filing of a new bond upon the recovery of an action on a bond; and (3) provides for suspension or revocation of an escrow agent's license if a new bond is not provided to the Department within 10 days of the recovery or notification of the Commissioner. Specifically, the Department must receive immediate notice of actions against sureties and licensees in order to require a licensee to obtain a new bond if there is a recovery on its existing bond. The provision helps ensure that escrow agents have valid bonds in place to protect the state and the public. In order for the state or a member of the public who has been wronged by an escrow agent to collect on a bond, the bond must be valid. Lastly, the provision informs escrow agents where to file new bonds to facilitate their compliance with the bond requirement.

Provision 5

Provision 5 requires written notice to the Department and the EAFC if a surety receives a claim or makes full or partial payment on a bond. Financial Code Section 17203 relieves a surety of all liability under the bond, in liquidation, if it pays its full amount of liability to the Commissioner, in lieu of the state or persons having a cause of action against the principal. Code of Civil Procedure Section 996.460 provides that if a judgment does not exhaust the full amount of a bond it decreases the amount of the bond but does not discharge the bond. It provides that the liability on the bond may be enforced thereafter from time to time until the amount of the bond is exhausted. The notice requested regarding the receipt of any claims on the bond is needed to put the Department and the EAFC on alert that a payment is pending on the bond and that it may need to be replenished. It is also necessary to provide them an opportunity to check the reason for the claim in case it involved a trust fund issue that needs to be addressed.

As stated earlier, Financial Code Section 17206 (1) authorizes the Commissioner to require the filing of a new bond when an action is commenced on an escrow agent's bond; (2) requires the filing of a new bond upon the recovery of an action on a bond; and (3) provides for suspension or revocation of an escrow agent's license if a new bond is not provided to the department within 10 days of the recovery or notification of the Commissioner. Additionally, Section 17202 requires that the penal sum of the bond be in a specified amount. The notice requested regarding payment on a bond is

necessary to enable the Department to ensure that an escrow agent has a bond that is in compliance with Escrow Law. The receipt of this information triggers the Department to require an escrow agent to either obtain a new bond after a payout, as required by Section 17206, or replenish its existing bond. Lastly, the provision informs sureties where to provide such notices.

Signature of Principal

The applicant must agree in writing in the surety bond form to comply with all of its conditions and provisions. This information is necessary for the Department to make a determination that the applicant has filed a satisfactory surety bond for licensure.

Approval by the California State Attorney General

The surety bond form has been reviewed and approved by the California State Attorney General in accordance with the provisions of Government Code Section 11110. The Office of Administrative Law filed the approved surety bond form with the Secretary of State on August 21, 2013 in accordance with the provisions of Government Code Section 11343.8.

DETERMINATION GOVERNMENT CODE SECTION 11346.9(a)(2)

The Commissioner has determined that the adoption, amendment or repeal of the regulation does not impose a mandate on local agencies or school districts. Thus, the Commissioner has determined that the adoption, amendment or repeal of the regulation does not require the state to provide reimbursement to local agencies or school districts.

ALTERNATIVES CONSIDERED

No alternative considered by the Department would be more effective in carrying out the purpose 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.

No reasonable alternative considered by the Department or that has 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.

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Commissioner has made an initial determination that the proposed regulatory action on escrow agent requirements will not have a significant adverse impact on business, and may in fact have a positive impact on the health and welfare of California residents and licensees by ensuring that independent escrow agents remain a viable industry in California, and by protecting California consumers from financial harm through earlier reviews of the status of licensees' surety bonds to better identify

potential abuses. Notably, the Department was asked to prepare this regulatory action by a representative of the EAFC, based on a request of its leadership. So while the proposed regulatory action to include requirements that surety bond companies provide notice of bond cancellations to the EAFC may have an adverse economic impact on escrow agents, namely from examination and investigation costs, industry is essentially self-imposing the regulation and related costs on itself. If the EAFC intended to investigate and/or examine every escrow agent that receives a bond cancellation notice, even if it does not have any other indicator of financial hardship, then the proposed regulation could subject escrow companies to unjustified costs. However, the EAFC has indicated that it only intends to investigate and/or examine escrow agents that have additional indicators after consulting with the Department.

The regulatory action requiring the surety bond form to include requirements that surety bond companies provide notice of bond cancellations to the Department is not likely to increase costs for licensees. It is simply codifying a current practice.

The Department has not relied upon any other reports or facts to support the initial determination that the regulation will not have a significant adverse economic impact on business, or any other impact described in Government Code Section 11346.3.

ADDENDUM, REGARDING PUBLIC COMMENTS

No request for hearing was received during the 45-day public comment period, which ended on February 11, 2013. Accordingly, no hearing was scheduled or held.

COMMENTS RECEIVED DURING THE 45-DAY COMMENT PERIOD

The Department received three public comment letters during the 45-day public comment period. The Department received one public comment letter after the 45-day public comment period ended. Those comments are summarized below, together with the Department's response.

1. Commentor: E-mail letter dated January 3, 2013, from Robert Duke with The Surety & Fidelity Association of America.

Comment No. 1: Commentor supports the proposed regulatory action to codify the escrow surety bond form and suggests further revisions to the form. Commentor suggests the form be amended to include additional limitations on the total aggregate liability for the penal sum of the bond to render a bond continuous by adding the following language in Paragraph 2: "Regardless of the number of years the bond remains in effect, the number of premiums paid, the number of renewals of the license or the number of claims made, the aggregate liability under the bond shall not exceed the current penal sum of this bond, as may be amended by rider or endorsement." (This language is a modification of the text in the comment letter based on a subsequent e-mail received February 8, 2013.) Commentor states the language is intended to avoid rulings such as that in *Cooper v. Hartford Financial Services Group, Inc.*, 2005 WL 1378907 (D.D.C. June 9, 2005), in an e-mail received February 14, 2013. The court in this case held that the aggregate limit of liability applied to each license period despite a statutory provision that

stated, “[T]he aggregate liability under the bond shall not exceed the penal sum of the bond.” Consequently, the court required a payment to the claimant of \$200,000 based on the cumulative coverage of each year the \$50,000 bond was in effect.

Response: No change was made to the proposed amendments as recommended by the Commentor. The Department believes current law provides sufficient guidance to determine the total aggregate liability for the penal sum of an escrow surety bond and to conclude that it is continuous.

- Bond amounts required by statute: Financial Code Section 17202 specifies the minimum amount a bond must be when it is initially filed and annually thereafter. The Section specifies that the initial bond must be minimally in the amount of \$25,000 and future bonds must be maintained in designated amounts based on an escrow agent’s “previous year’s average annual trust fund obligations.”
- Statutory limits on aggregate liability under an escrow surety bond: Code of Civil Procedure Section 996.470 limits the aggregate liability of a surety to the amount specified in the bond. Specifically, it states that aggregate liability to all persons for all breaches of the conditions(s) of a bond is limited to the amount of the bond, except where a surety makes an advance payment on a final judgment, fails to make payment on a claim or only makes a partial payment on a claim. The Section further provides that if a bond is given in an amount greater than the amount required by statute or otherwise, the liability of the surety on the bond is limited to the amount required by statute or otherwise, unless the amount of the bond has been increased voluntarily or by agreement of the parties to satisfy an objection to the bond made in an action or proceeding. Additionally, Financial Code Section 17205 limits the time frame in which the liability on the bond may be enforced by prohibiting civil actions more than two years from the occurrence of an act or default.
- Proposed bond renewal language unnecessary: It is unnecessary to include the number of renewals of a license in regard to the penal sum provision in the bond form because California law does not require the renewal of escrow agent licenses. Escrow agent licenses exist until they are suspended, revoked or surrendered.
- Cooper v. Hartford Financial Services Group, Inc.: The Department differentiates the holding in *Cooper v. Hartford Financial Services Group, Inc.*, from potentially similar situations in California because in addition to the Financial Code and Code of Civil Procedure Sections noted above, Financial Code Section 17202.1 allows a licensee to do a cash bond in lieu of a surety bond. It provides that once the initial cash bond is put up, no matter how many years the escrow agent is licensed, there are no further funds added to the cash bond. It will be \$25,000 in five years just as it was \$25,000 in the first year, unless a claim was paid and then it would only be brought back up to \$25,000. Thus, the totality of these sections would indicate the escrow surety bond is meant to be continuous not cumulative.

Comment No. 2: Commentor states that the provision that would require a surety to send notice of cancellation to the EAFC would create an unnecessary burden for the surety. Commentor states that the Department's belief that the provision may help ensure the public is reimbursed for any losses and potentially prevent losses in the first place by providing an early indication that an escrow agent is experiencing financial problems is incorrect because protection of the public is not contemplated by the "coverage" provided by the EAFC. Commentor notes that the EAFC only indemnifies its member escrow agents against losses, as specified, and does not protect the public. Commentor does not see how such a notice would protect the public.

Response: No change was made to the proposed amendments as recommended by the Commentor. The Department agrees that the EAFC's statutory requirement is directly intended to indemnify its member escrow agents against losses, as specified, and not to protect the public. However, an indirect result of the EAFC's indemnification of its member escrow agents' losses is the protection of consumer deposits in escrow trust accounts with those escrow agents. The provision of cancellation notices to the EAFC may provide additional opportunities to help resolve any financial issue affecting an escrow agent, especially one that may affect any consumer deposits and/or an escrow agent's ability to renew a bond.

Comment No. 3: Commentor states that providing notice of a bond cancellation to the EAFC is an additional obligation and the effectiveness of the cancellation is not conditioned on the receipt of the notice. Commentor recommends the bond form be amended to clarify this concept.

Response: The requested change regarding the effectiveness of the notice of cancellation was accepted and incorporated into the proposed regulations as recommended.

2. Commentor: Letter dated February 1, 2013, from Michael D. Belote with California Advocates, Inc. on behalf of the Escrow Agents' Fidelity Corporation (EAFC).

Comment No. 1: Commentor states that the proposed regulatory action will add clarity to the bond requirements for licensed escrow agents. Commentor further states that the EAFC is pleased that the proposed regulatory action provides for notice to the Department and the EAFC in the event of a bond cancellation, withdrawal or non-renewal.

Response: No change was made to the proposed amendments as the Commentor is in agreement with the referenced proposed amendments.

Comment No. 2: Commentor recommends that paragraphs 4 and 5 of the proposed bond form in the proposed regulatory action be amended to require notice to the EAFC, in addition to the Department, in the event that principals or sureties under the bond are served with notice of actions commenced under the bond, or in the event a surety makes full or partial payment on the bond.

Response: The requested changes to paragraphs 4 and 5 (the provisions to which the bond is subject) were accepted and incorporated into the proposed regulations as recommended.

3. Commentor: Facsimile letter dated February 8, 2013, from Tim Egan with the Escrow Institute of California.

Comment No. 1: Commentor concurs with the proposed regulations adopting a standardized escrow agent surety bond and providing a 30-day notice of bond cancellation to the EAFC.

Response: No change was made to the proposed amendments as the Commentor is in agreement with the referenced proposed amendments.

Comment No. 2: Commentor disagrees with the provision that would allow the EAFC to conduct audits on an escrow agent licensee upon notice of bond cancellation. Commentor states that allowing such audits could add unnecessary regulatory burdens and costs on licensees and that the Department of Corporations is best equipped to conduct any initial audits under its authority to conduct examinations at any time “without cause” of any escrow licensee. Commentor further recommends that EAFC’s authority to conduct any audits commence only after the issuance of an Order to Cease New Business or after the conclusion of the 30-day notice of bond cancellation and the licensee does not have a surety bond in effect, whichever occurs first.

Response: No change was made to the proposed amendments. Financial Code Section 17336 authorizes the EAFC, among other things, upon submitting written notice to the Commissioner, to conduct an examination or investigation of the business practices of a member’s handling and processing of trust obligations or the failure to pay an assessment, as specified. The proposed regulations would not change the EAFC’s authority to conduct audits of licensees. The proposed regulations are intended to provide the Department and the EAFC with notice of events that may be indicative of potential problems with licensees in order to help prevent or alleviate escrow losses and ultimately protect the integrity of consumers’ deposits with licensed escrow companies. The recommendation would limit the EAFC’s current audit authority and thus reduce its ability to detect potential financial issues experienced by escrow companies that may result in escrow losses to the detriment of consumers.

4. Commentor: E-mailed supplement letter dated March 12, 2013, from Michael D. Belote with California Advocates, Inc. on behalf of the Escrow Agents’ Fidelity Corporation (EAFC).

Comment No. 1: Commentor’s letter supplements the comment letter submitted on February 1, 2013, to address the Escrow Institute of California’s comment recommending a limitation on the EAFC’s authority to conduct audits.

Response: No change was made to the proposed amendments as recommended by the Commentor. Financial Code Section 17336 authorizes the EAFC, among

other things, upon submitting written notice to the Commissioner, to conduct an examination or investigation of the business practices of a member's handling and processing of trust obligations or the failure to pay an assessment, as specified. The proposed regulations would not change the EAFC's authority to conduct audits of licensees. The proposed regulations are intended to provide the Department and the EAFC with earlier notice of events that may be indicative of potential problems with licensees in order to help prevent or alleviate escrow losses and ultimately protect the integrity of consumers' deposits with licensed escrow companies. The recommendation would limit the EAFC's current audit authority and thus reduce its ability to detect potential financial issues experienced by escrow companies that may lead to losses and the detriment of consumers.

COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD

The addendum to the Initial Statement of Reasons to clarify and explain in detail the necessity for the Escrow Law surety bond regulations was posted for a 15-day public comment period. No written comments were received during the 15-day public comment period, which ended on September 13, 2013.

o o o