

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians*

Jan Lynn Owen
Commissioner of Business Oversight

April 10, 2015

**INVITATION FOR COMMENTS ON PROPOSED RULEMAKING UNDER THE
CALIFORNIA DEFERRED DEPOSIT TRANSACTION LAW
(PRO 04/08)**

INVITATION

The Department of Business Oversight (Department) is considering changes to the regulations under the California Deferred Deposit Transaction Law, and in accordance with Government Code sections 11346, subdivision (b), and 11346.45, seeks comments on the proposed regulations prior to the Department initiating formal rulemaking.

The Commissioner of Business Oversight (Commissioner) invites parties who would be subject to the proposed regulations and other interested parties to review and provide comments on the accompanying draft text of the proposed changes to the regulations for deferred deposit originators. Comments will assist the Department in determining whether the proposed changes to the regulations are necessary and appropriate, and achieve the regulatory objectives in the most efficient and effective manner.

This invitation for comments is not a proposed rulemaking action under Government Code section 11346, and the public will have additional opportunity to comment on the proposed changes if, after consideration of comments from interested parties, the Department proceeds with a notice of proposed rulemaking action.

BACKGROUND

The Department licenses and regulates deferred deposit originators, more commonly known as payday lenders, under the California Deferred Deposit Transaction Law (Financial Code section 23000 et seq.).

The regulations under the California Deferred Deposit Transaction Law have not been substantially amended since they were originally adopted in 2003. While the changes being considered to the regulations are intended to strengthen consumer protection, some of the changes may be controversial. The Department sought to increase public participation by

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providing opportunities for interested persons to provide their perspectives on the changes being considered to the regulations.

Specifically, in May 2013, the Department solicited comments from the public on the proposed rules [Invitation for Comments on Proposed Rulemaking under the California Deferred Deposit Transaction Law (PRO 04-08), dated May 29, 2013]. The Department received a number of written comments on the proposed changes.

Some of the comments from the first invitation offered insights that suggested the need for further consideration and therefore the Department requested additional information in a second invitation for comments in March 2014 [Invitation for Comments on Proposed Rulemaking under the California Deferred Deposit Transaction Law (PRO 04-08), dated March 6, 2014]. The Department also sought in this second invitation specific information on the potential economic and cost impact from the proposed changes to assess the consequences to deferred deposit businesses and consumers in California. The Department received several more comments from consumer groups and the deferred deposit originator industry.

Reason for Third Invitation for Comments

The Department materially amended the proposed rules after further considering the legislative history and intent, and public policy objectives of the California Deferred Deposit Transaction Law, and the comments received in response to the Department's two previous invitations for comments.

Some of the rules being proposed in the accompanying draft text differ substantially from the draft texts from the first two invitations for comments. The Department believes it is in the public interest to obtain the views from all interested parties before moving forward on the proposed changes. The draft text accompanying this invitation for comments replaces in its entirety the previous draft texts.

The significant changes in this draft text are summarized as follows:

- Prohibit the use of electronic fund transfers, including Automated Clearing House transactions; prepaid debit cards; debit cards; remotely created checks; remotely created purchase orders; and credit cards in a deferred deposit transaction for any purpose, including in the origination, funding or repayment of a deferred deposit transaction.
- Authorize in Sections 2030.90 through 2030.98 the Commissioner to establish a common database through which all deferred deposit transactions are entered in real-time by deferred deposit originators and require deferred deposit originators to use the database in originating deferred deposit transactions.

- Clarify in Section 2030.23 the meaning of “customer’s personal check” and “checking account”.
- Change the previously proposed definition of “employee” in Section 2023.2 to mean an individual whose compensation is reported or is required to be reported on a W-2 form. The definition of “employee” was more broadly defined in the previously proposed rule.

Economic Impact to Licensees and Consumers from Proposed Changes

In addition to any other comments relating to the proposed rules, the Department is interested in comments addressing the economic and cost impact to businesses and consumers from the proposed changes, and whether there are other alternatives that would achieve the regulatory objectives in a less burdensome manner.

The proposed rules would among other things, require deferred deposit originators to use a common database in originating deferred deposit transactions. This would require deferred deposit originators to have the equipment and knowledge necessary to use the database. Some deferred deposit originators may incur start-up costs to ensure that they have adequate infrastructure to interface with the database, including a computer at every location where the deferred deposit originator enters into deferred deposit transactions with customers, Internet and malware protection, antivirus and other software upgrades. Deferred deposit originators may incur ongoing costs for enhanced Internet connectivity and all deferred deposit originators will incur additional annual costs for the Department’s administration of the database.

The Department is inviting interested parties to provide comments on the following matters:

- Would the proposed changes to the regulations under the California Deferred Deposit Transaction Law have an adverse statewide economic impact or the potential for an adverse impact on consumers, or on deferred deposit businesses, including their ability to compete with businesses in other states? If so, please explain how and to what extent the proposed changes may adversely impact businesses and consumers.
- What are other alternatives to the proposed changes that would lessen any adverse economic impact to businesses or consumers, and accomplish the regulatory objectives of protecting consumers and improving regulatory oversight of the industry?
- What specific operational or other changes would need to be made by deferred deposit businesses to comply with the proposed changes and what are the potential costs of these changes?

- What other alternatives would be more effective, or as effective as and less burdensome to licensees or consumers, in achieving the regulatory objectives of protecting consumers and improving regulatory oversight of the industry than the proposed changes?
- What benefits would the proposed changes provide to deferred deposit businesses or consumers?
- To what extent would the proposed changes create or eliminate jobs or businesses, or expand businesses currently doing business in this state?
- What performance standards may be used in place of any prescriptive standards in the proposed changes? The proposed rule requiring deferred deposit originators to use a common database is a prescriptive standard because it mandates the use of specific technologies or equipment. “Performance standard” means a regulation that describes an objective with the criteria stated for achieving the objective.¹ “Prescriptive standard” means a regulation that specifies the sole means of compliance with a performance standard by specific actions, measurements, or other quantifiable means.²

TIME FOR COMMENTS

Comments may be submitted until 5:00 p.m., May 25, 2015. If the final day for the acceptance of comments is a Saturday, Sunday or state holiday, the comment period will close at 5:00 p.m. on the next business day.

WHERE TO SUBMIT COMMENTS

You may submit comments, addressed as follows, by any of these means:

Electronic

Comments may be submitted electronically to regulations@dbo.ca.gov. Please identify the comments as PRO 04/08 in the subject line.

Postal Mail

Department of Business Oversight
Attn: Dan Warren, Legal Division
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Sacramento, CA 95814-4052

¹ Govt. Code § 11342.570.

² Govt. Code § 11342.590.

Fax

(916) 322-5875

CONTACT PERSON

Questions regarding the invitation for comments may be directed to Lila Mirrashidi, Deputy Commissioner, at (916) 322-8862 or Lila.Mirrashidi@dbo.ca.gov.