

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

Jan Lynn Owen
Commissioner of Business Oversight

March 6, 2014

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

INVITATION

In accordance with Government Code sections 11346, subdivision (b), and 11346.45, the Department of Business Oversight (Department) is inviting comments from interested persons to address questions concerning deferred deposit transactions. The Department seeks to involve parties who would be subject to the regulations and other interested parties in this discussion. These comments will assist the Department in determining whether certain proposed changes to the regulations under the California Deferred Deposit Transaction Law are necessary and appropriate.

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 Department is considering various changes to the regulations under the California Deferred Deposit Transaction Law and prior to initiating formal rulemaking, recently sought comments on these changes from interested parties [see Invitation for Comments on Proposed Rulemaking Under the California Deferred Deposit Transaction Law (PRO 04-08), dated May 29, 2013].

Among other things, the potential changes would authorize a licensee to use electronic fund transfers and prepaid debit cards offered by licensees to provide the funds from transactions to customers and to collect payments from them, but would not permit a licensee to use a customer's debit card, prepaid debit card or credit card in conjunction with a deferred deposit transaction.

QUESTIONS UNDER CONSIDERATION

The Department received a number of written comments on the proposed changes. Some of the comments have offered insights that may suggest the need for further consideration and therefore the Department is requesting additional information. The Department is also seeking specific information on the potential economic and cost

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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 Department believes it is in the public interest to obtain the views from all interested parties before moving forward on the proposed changes. Accordingly, the Department is inviting interested parties to provide comments on the following matters.

Questions on Comments Received:

1. The Department received comments that requiring licensees to “ping” customer bank accounts prior to withdrawing funds would ensure that there are sufficient funds in the account and thereby reduce the harm to consumers caused by NSF fees. The Department’s proposed changes would define “pinging” as a bank service that permits a deferred deposit originator to confirm the availability of funds in a customer’s account and in which the customer does not incur a bank charge or fee and no funds are withdrawn from the customer’s account (Section 2030.45).
 - Should licensees be required to “ping” customer bank accounts before attempting to withdraw any funds? Is it operationally feasible and what hardships, if any, would this requirement pose to licensees and consumers?
2. The California Deferred Deposit Transaction Law authorizes a licensee to defer the deposit of a customer’s personal check for up to 31 days (Financial Code section 23035), but does not define “personal check.” The Department received comments stating that electronic fund transfers, debit cards, and prepaid debit cards are the legal and functional equivalent of a checking account or are otherwise permissible under the California Deferred Deposit Transaction Law, and that some checking accounts do not have checks or the ability to write checks from the account. Conversely, other comments indicate that the California Deferred Deposit Transaction Law was intended to be a paper check-based law, and that electronic fund transfers, debit cards, prepaid debit cards and remotely created checks are not a personal paper check or the equivalent of, and therefore the law does not authorize their use to make or repay a transaction. The comments further state that these products used in conjunction with deferred deposit transactions, create significant harm to consumers.
 - Would permitting electronic fund transfers, debit cards, prepaid debit cards, or remotely created checks to constitute a “personal check” eliminate the distinction between deferred deposit transactions under the California Deferred Deposit Transaction Law and small dollar short-term loans subject to the California Finance Lenders Law?

- How does a paper check offer more protections, such as mandated disclosure requirements or other restrictions, to consumers than an electronic fund transfer, debit card, prepaid debit card or remotely created check?
3. The Department received comments indicating that deferred deposit transactions may be made under the law using debit card-accessed demand deposit accounts, prepaid debit card-accessed demand deposit accounts, and general-purpose prepaid debit card-accessed demand deposit accounts, and that most (prepaid debit) cards are associated with a checking account. However, the Department's understanding is that a prepaid debit card is not linked to a checking account. The Department's proposed changes would define a prepaid debit card to mean a debit card issued by a bank and offered by a deferred deposit originator to a customer, in which the availability of funds is not associated with any checking account, credit card or any other extension of credit, and no extension of credit is offered by the bank originating the prepaid debit card (Section 2030.49).
- What is meant by "debit card-accessed demand deposit account", "prepaid debit card-accessed demand deposit account", and "general-purpose prepaid debit card-accessed demand deposit account", and how are these products a "personal check" required under the California Deferred Deposit Transaction Law?
 - What characteristics distinguish these products from a debit card or a prepaid debit card?
 - What are the costs, benefits, risks or harm to consumers from allowing the use of these products as a personal check under the California Deferred Deposit Transaction Law?

Economic Impact to Licensees and Consumers from Proposed Changes:

4. 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.
5. 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?

6. 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?
7. 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?
8. What benefits would the proposed changes provide to deferred deposit businesses or consumers?
9. To what extent would the proposed changes create or eliminate jobs or businesses, or expand businesses currently doing business in this state?
10. What performance standards may be used in place of any prescriptive standards in the proposed changes? "Performance standard" means a regulation that describes an objective with the criteria stated for achieving the objective (Government Code section 11342.570). "Prescriptive standard" means a regulation that specifies the sole means of compliance with a performance standard by specific actions, measurements, or other quantifiable means (Government Code section 11342.590).

TIME FOR COMMENTS

The Department invites interested parties to submit comments to the questions by May 19, 2014.

This invitation for comments from interested parties 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.

WHERE TO SUBMIT COMMENTS

INVITATION FOR COMMENTS (PRO 04/08)

Comments Requested by May 19, 2014

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You may submit comments by any of the following means:

Electronic

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

Mail

California Department of Business Oversight

Legal Division

Attn: Karen Fong (PRO 04/08)

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Fax

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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.