

Title 09

MARYLAND DEPARTMENT OF LABOR

Subtitle 03 COMMISSIONER OF FINANCIAL REGULATION

09.03.14 Money Transmitters

Authority: *Business Regulation Article, §2-105; Financial Institutions Article, §§2-105.1, 12-401, and 12-403*]; Annotated Code of Maryland

Notice of Proposed Action

[22-315-P]

The Commissioner of Financial Regulation proposes to recodify existing Regulation .01 to be Regulation .02 and adopt new Regulations .01 and .03—18 under COMAR 09.03.14 Money Transmitters.

Statement of Purpose

The purpose of this action is to continue the process of modernizing Maryland's Money Transmission regulatory system that started with the Legislature's adoption of Ch. 100 (S.B. 219), Acts of 2021, which updated Maryland's Money Transmission law (Financial Institutions Article, §21-401 et seq., Annotated Code of Maryland) by aligning Maryland's Money Transmission law with the nationwide standards embodied in the Money Transmitter Model Law issued by the Conference of State Bank Supervisors in 2021, which have been adopted, in full or partial form, by six states and are under consideration by many others. This action enhances the Office of the Commissioner of Financial Regulation's (OCFR's) money transmission regulations by adding:

- (1) Definitions for certain undefined terms used in money transmission and in Maryland's Money Transmission law;
- (2) A listing of activities that do not constitute money transmission for the purpose of obtaining a money transmitter's license;
- (3) A statement ensuring harmonization of Maryland Money Transmission law with applicable federal law, if any;
- (4) A description of the minimum information about an applicant required to be provided in an application for a money transmitter license;
- (5) A description of the information required to be provided about an applicant's control persons and key personnel in an application for a money transmitter license;
- (6) Procedures for a money transmitter's use of a trade name;
- (7) Procedures for the processing of money transmitter licensing applications through a multistate licensing process;
- (8) A requirement for an applicant to establish, document, and maintain specified corporate governance structures based on their operational complexity and risk profile, including descriptions of internal and external audit and risk management requirements;
- (9) Provisions for the suspension or revocation of a money transmitter's license;
- (10) Procedures and standards applicable to an acquisition of or change in control in a money transmitter or of a money transmitter's key individual or control person;
- (11) A requirement to comply with applicable Bank Secrecy Act requirements and to file related reports;
- (12) Provisions governing the conduct of business through authorized delegates;
- (13) A requirement for the timely transmission of money received for transmission;
- (14) Provisions governing the circumstances requiring the refunding of money received for transmission;
- (15) Rules governing the provision of receipts to money senders;
- (16) Disclosures required of payroll processing services; and
- (17) Prudential and financial responsibility standards to be met by money transmitters, including bonding requirements and a description of permissible investments.

Estimate of Economic Impact

I. Summary of Economic Impact. The economic impact of the proposed action is expected to be low.

II. Types of Economic Impact.

Revenue
(R+/R-)

F. Direct and indirect effects on public:

Consumers (+) Impactful

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

D. The proposed action imposes no additional fees or charges. The proposed action may, in some cases, increase recordkeeping and compliance costs for regulated entities. Entities may incur costs associated with the review of an entity's corporate governance structure to ensure compliance with proposed Regulation .08 and any modification of that structure that may be necessary. Though many regulated entities obtain external audits, some do not, and such entities may incur additional costs associated with obtaining external audits in instances in which the Commissioner determines an audit to be necessary and the entity does not currently obtain external audits. There may be costs associated with the review and/or development, if necessary, of policies required to manage the use of authorized delegates under proposed Regulation .13. There may be increased costs associated with processing refunds and the provision of receipts in accordance with the rule. Entities subject to the payroll processing rules may incur additional costs if their clients do not provide the listed information. The Commissioner cannot provide exact estimates of these costs; however, in most instances, it is expected that the aggregate impact on any licensee is unlikely to be significant. It is assumed that the corporate governance requirements specified in proposed Regulation .08 are currently being met by most of the affected businesses, that there will be few if any instances in which the Commissioner requires an external audit of an entity which does not already obtain such audits, and that affected businesses currently have policies in place that satisfy the requirements of proposed Regulation .13. These assumptions are based on information obtained during the Commissioner's routine examination of licensed money transmitters.

F. In certain circumstances it is expected that the public will directly benefit from receiving receipts for their transactions and from receiving refunds within 10 days. It is expected that the closer coordination among state regulators fostered by this proposed action will result in more compliant, resilient, and better functioning money transmitting entities, thereby indirectly benefiting the public with a safer and sounder money transmission system.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Amy P. Hennen, Director of Legislative Response and Special Projects, Office of the Commissioner of Financial Regulation, Maryland Department of Labor, 1100 North Eutaw Street, Suite 611, Baltimore, MD 21201, or call 410-230-6094, or email to amy.hennen@maryland.gov. Comments will be accepted through March 27, 2023. A public hearing has not been scheduled.

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Acting in concert" means persons knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement.

(2) "Authorized delegate" has the meaning stated in Financial Institutions Article, §12-401, Annotated Code of Maryland.

(3) "Bank Secrecy Act" means the Bank Secrecy Act, 31 U.S.C. §5311, et seq. and its implementing regulations, as amended and recodified from time to time.

(4) "Closed loop stored value" means stored value that is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value.

(5) "Control" means:

(a) The power to vote, directly or indirectly, at least 25 percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee;

(b) The power to elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee; or

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

(11) “In this State” means:

(a) For a transaction requested in person, at a physical location within Maryland; and

(b) For a transaction requested electronically or by phone, the provider of money transmission may determine if the person requesting the transaction is “in this State” by relying on other information provided by the person regarding the location of the individual’s residential address or a business entity’s principal place of business or other physical address location, and any records associated with the person that the provider of money transmission may have that indicate that location, including but not limited to an address associated with an account.

(12) “Individual” means a natural person.

(13) “Internal audit” means the internal independent and objective assurance and consulting activity performed to evaluate and improve the effectiveness of a licensee’s operations, risk management, internal controls, and governance processes.

(14) “Key individual” means any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee.

(15) “Licensee” has the meaning stated in Financial Institutions Article, §12-401, Annotated Code of Maryland.

(16) “Maryland Money Transmission Act” means Financial Institutions Article, Title 12, Subtitle 4, Annotated Code of Maryland.

(17) “Material litigation” has the meaning stated in Financial Institutions Article, §12-401, Annotated Code of Maryland.

(18) “Monetary value” means a medium of exchange, whether or not redeemable in money.

(19) Money Transmission.

(a) “Money transmission” has the meaning stated in Financial Institutions Article, §12-401, Annotated Code of Maryland.

(b) “Money transmission” includes a payroll processing service.

(20) “MSB accredited state” means a state agency that is accredited by the Conference of State Bank Supervisors and Money Transmitter Regulators Association for money transmission licensing and supervision.

(21) “Multistate licensing process” means any agreement entered into by and among state regulators relating to coordinated processing of applications for money transmission licenses, applications for the acquisition of control of a licensee, control determinations, or notice and information requirements for a change of key individuals.

(22) “NMLS” has the meaning stated in Financial Institutions Article, §1-101, Annotated Code of Maryland.

(23) “Outstanding money transmission obligations” has the meaning assigned to the term “outstanding money transmission” in Financial Institutions Article, §12-401, Annotated Code of Maryland.

(24) “Passive investor” means a person that:

(a) Does not have the power to elect a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee;

(b) Is not employed by and does not have any managerial duties of the licensee or person in control of a licensee;

(c) Does not have the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee; and

(d) Either:

(i) Attests to §B(24)(a)—(c) of this regulation, in a form and in a medium prescribed by the Commissioner; or

(ii) Commits to the passivity characteristics of §B(24)(a)—(c) of this regulation in a written document.

(25) Payment Instrument.

(a) “Payment instrument” has the meaning stated in Financial Institutions Article, §12-401, Annotated Code of Maryland.

(b) “Payment instrument” does not include prepaid access or any instrument that is:

(i) Redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value; or

(ii) Not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.

(26) Payroll Processing Services.

(a) “Payroll processing services” means receiving money for transmission pursuant to a contract with a person to deliver wages or salaries, make payment of payroll taxes to state and federal agencies, make payments relating to employee benefit plans, or make distributions of other authorized deductions from wages or salaries.

(b) “Payroll processing services” does not include an employer performing payroll processing services on its own behalf or on behalf of its affiliate.

(27) “Person” has the meaning stated in Financial Institutions Article, §1-101, Annotated Code of Maryland.

A. In accordance with the Maryland Money Transmission Act, the following activity by a person does not constitute money transmission for the purposes of necessitating a license to conduct that activity:

(1) An operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons exempted under the Maryland Money Transmission Act or licensees, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar funds transfers.

(2) A person appointed as an agent of a payee to collect and process a payment from a payor to the payee for goods or services, other than money transmission itself, provided to the payor by the payee, if:

(a) There exists a written agreement between the payee and the agent directing the agent to collect and process payments from payors on the payee's behalf;

(b) The terms of the written agreement required by §A(2)(a) of this regulation are consistent with a principal's appointment of an agent under Maryland law;

(c) The payee holds the agent out to the public as accepting payments for goods or services on the payee's behalf;

(d) Payment for the goods and services is treated as received by the payee upon receipt by the agent so that the payor's obligation is extinguished and there is no risk of loss to the payor if the agent fails to remit the funds to the payee;

(e) The agent is not serving in an escrow capacity in connection with the transaction;

(f) The agent is not acting as agent to more than one party in the transaction; and

(g) Payment by the agent to the payee occurs promptly and is not conditioned on the occurrence of any future event or performance by any party to the transaction.

(3) A person that acts as an intermediary by processing payments between an entity that has directly incurred an outstanding money transmission obligation to a sender, and the sender's designated recipient, if that the entity:

(a) Is properly licensed or exempt from licensing requirements under the Maryland Money Transmission Act;

(b) Provides a receipt, electronic record, or other written confirmation to the sender identifying the entity as the provider of money transmission in the transaction; and

(c) Bears sole responsibility to satisfy the outstanding money transmission obligation to the sender, including the obligation to make the sender whole in connection with any failure to transmit the funds to the sender's designated recipient.

(4) A person expressly appointed as a third-party service provider to or agent of an entity exempt under the Maryland Money Transmission Act, other than an authorized delegate, solely to the extent that:

(a) That service provider or agent is engaging in money transmission on behalf of and pursuant to a written agreement with the exempt entity that sets forth the specific functions that the service provider or agent is to perform; and

(b) The exempt entity assumes all risk of loss and all legal responsibility for satisfying the outstanding money transmission obligations owed to purchasers and holders of the outstanding money transmission obligations upon receipt of the purchaser's or holder's money or monetary value by the service provider or agent.

B. The Commissioner may require that any person claiming to be either exempt from licensing pursuant to the Maryland Money Transmission Act or not engaged in activity constituting money transmission necessitating a license provide information and documentation to the Commissioner demonstrating that it qualifies for any claimed exemption or is not engaged in activities necessitating a license.

.04 Relationship to Federal Law.

A. If State money transmission jurisdiction is conditioned on a federal law, any inconsistencies between a provision of the Maryland Money Transmission Act and the federal law governing money transmission shall be governed by the applicable federal law to the extent of the inconsistency.

B. If any inconsistencies exist between the Maryland Money Transmission Act and a federal law that governs pursuant to this regulation, the Commissioner may provide interpretive guidance that:

(1) Identifies the inconsistency; and

(2) Identifies the appropriate means of compliance with federal law.

.05 Application for License.

A. In addition to the requirements set forth in Financial Institutions Article, §12-407, Annotated Code of Maryland, applications for a license shall contain at a minimum and as applicable:

(1) The legal name and residential and business addresses of the applicant and any fictitious or trade name used by the applicant in conducting its business;

B. In addition to the requirements set forth in Financial Institutions Article, §12-407, Annotated Code of Maryland, if an applicant is a corporation, limited liability company, partnership, or other legal entity, the applicant shall also provide:

- (1) The date of the applicant's incorporation or formation and state or country of incorporation or formation;
- (2) If applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;
- (3) A brief description of the structure or organization of the applicant, including any parents or subsidiaries of the applicant, and whether any parents or subsidiaries are publicly traded;
- (4) The legal name, any fictitious or trade name, all business and residential addresses, and the employment, as applicable, in the 3-year period next preceding the submission of the application of each key individual and person in control of the applicant;
- (5) A list of any criminal convictions and material litigation in which a person in control of the applicant that is not an individual has been involved in the 3-year period preceding the submission of the application;
- (6) A copy of audited financial statements of the applicant for the most recent fiscal year and for the 2-year period next preceding the submission of the application or, if the audited statements are not available for good cause and the Commissioner determines the Commissioner can make findings necessary to grant or deny the license, certified unaudited financial statements for the most recent fiscal year or other period acceptable to the Commissioner;
- (7) A certified copy of unaudited financial statements of the applicant for the most recent fiscal quarter;
- (8) If the applicant is a publicly traded corporation, a copy of the most recent report filed with the United States Securities and Exchange Commission under §13 of the federal Securities Exchange Act of 1934, 15 U.S.C. §78m, as amended or recodified from time to time;
- (9) If the applicant is a wholly owned subsidiary of:
 - (a) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under §13 of the U.S. Securities Exchange Act of 1934, 15 U.S.C. §78m, as amended or recodified from time to time; or
 - (b) A corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;
- (10) The name and address of the applicant's registered agent in this State; and
- (11) Any other information the Commissioner reasonably requires with respect to the applicant.

C. The Commissioner may waive or modify the requirement to produce audited financial statements in Financial Institutions Article, §12-407, Annotated Code of Maryland, if:

- (1) The applicant cannot produce audited financial statements required by Financial Institutions Article, §12-407, Annotated Code of Maryland;
- (2) The Commissioner determines good cause exists for the applicant's inability to produce audited financial statements required by Financial Institutions Article, §12-407, Annotated Code of Maryland;
- (3) The applicant produces certified unaudited financial statements for the most recent fiscal year or other period required by the Commissioner; and
- (4) The Commissioner determines the Commissioner can make findings necessary to grant or deny the license based on all information presented.

D. The Commissioner may waive one or more requirements of this regulation or permit an applicant to submit other information in lieu of the required information.

E. Applications.

- (1) The Commissioner shall approve or deny an application for an initial license, a renewal license, or a license amendment within 60 days after the Commissioner receives a completed application, including, if applicable, a surety bond and all required fees.
- (2) If the Commissioner notifies an applicant that an application for an initial license, a renewal license, or a license amendment is incomplete, the Commissioner shall itemize the steps that the applicant must take to complete the application.
- (3) The application for an initial license, a renewal license, or a license amendment may not be approved until after the applicant completes all steps identified in the Commissioner's notice.
- (4) If an application for an initial license, a renewal license, or license amendment is incomplete when submitted and remains incomplete, the Commissioner may stop processing and consider the incomplete application withdrawn, if the Commissioner has previously notified the applicant of the basis for incompleteness in accordance with §E(2) of this regulation, and given the applicant not less than 15 days to correct the incompleteness.

A. Any individual in control of a licensee or applicant, any individual that seeks to acquire control of a licensee, and each key individual shall furnish to the Commissioner through NMLS the following items:

(1) The individual's fingerprints for submission to the Federal Bureau of Investigation and the Commissioner for purposes of a national criminal history background check unless the person currently resides outside of the United States and has resided outside of the United States for the last 10 years; and

(2) Personal history and experience in a form and in a medium prescribed by the Commissioner, to obtain the following:

(a) An independent credit report from a consumer reporting agency unless the individual does not have a Social Security number, in which case, this requirement shall be waived;

(b) Information related to any criminal convictions or pending charges; and

(c) Information related to any regulatory or administrative action and any civil litigation involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty, or breach of contract.

B. If the individual has resided outside of the United States at any time in the last 10 years, the individual shall also provide an investigative background report prepared by an independent search firm that meets the following requirements:

(1) At a minimum, the search firm:

(a) Shall demonstrate that it has sufficient knowledge, resources, and employs accepted and reasonable methodologies to conduct the research of the background report; and

(b) May not be affiliated with or have an interest with the individual it is researching.

(2) At a minimum, the investigative background report shall be written in the English language and shall contain the following:

(a) If available in the individual's current jurisdiction of residency, a comprehensive credit report, or any equivalent information obtained or generated by the independent search firm to accomplish that report, including a search of the court data in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;

(b) Criminal records information for the past 10 years, including, but not limited to, felonies, misdemeanors, or similar convictions for violations of law in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;

(c) Employment history;

(d) Media history, including an electronic search of national and local publications, wire services, and business applications; and

(e) Financial services-related regulatory history, including but not limited to money transmission, securities, banking, insurance, and mortgage-related industries.

.07 Multistate Licensing Process.

A. If an applicant for licensure under the Maryland Money Transmission Act avails itself or is otherwise subject to a multistate licensing process:

(1) Subject to §B of this regulation, the Commissioner's investigation of the applicant under Financial Institutions Article, §12-409, Annotated Code of Maryland, may include the investigation results of a lead investigative state; or

(2) If Maryland is a lead investigative state, the Commissioner may investigate the applicant pursuant to Financial Institutions Article, §12-409, Annotated Code of Maryland, and the timeframes established by agreement through the multistate licensing process, except that, in no case shall the timeframe be noncompliant with the application period in Financial Institutions Article, §12-409, Annotated Code of Maryland.

B. The Commissioner's investigation of the applicant under Financial Institutions Article, §12-409, Annotated Code of Maryland, may include the investigation results of a lead investigative state if:

(1) The Commissioner reasonably determines that the lead investigative state possesses licensing and supervision authority over money transmission in its state substantially similar to the licensing and supervision authority of the Commissioner over money transmission in Maryland;

(2) The Commissioner reasonably determines that the investigation of the lead investigative state adequately addresses the applicant's financial condition and responsibility, financial and business experience, character, and general fitness;

(3) The Commissioner reasonably determines the lead investigative state has sufficient staffing, expertise, and minimum standards for the purposes of investigating an applicant for a license permitting money transmission; and

(4) The Commissioner supplements the investigation of the lead investigative state with any information the Commissioner considers relevant.

.08 Corporate Governance.

(5) Each licensee shall, not less than annually, conduct a review of its corporate governance to determine its overall effectiveness, address emerging risks and otherwise assure that the corporate governance remains commensurate with the size, operational complexity, and overall risk profile of the licensee.

(6) Any documentation, controls, policies, procedures, requirements, audits, reports, or other materials included in this regulation shall be made available to the Commissioner upon the Commissioner's request.

B. Internal Audit.

(1) A licensee shall establish internal audit requirements that are appropriate for the size, complexity, and risk profile of the licensee.

(2) Unless impracticable given the size of the licensee, internal audit functions shall be performed by employees of the licensee who report to the licensee's owners or board of directors and who are not otherwise supervised by the persons who directly manage the activities being reviewed.

(3) Employees performing internal audit functions shall have sufficient knowledge, training, and resources to provide a reliable evaluation of the licensee's operations, risk management, internal controls, and governance processes.

C. External Audit.

(1) If the Commissioner determines, based on the size, operational complexity, and overall risk profile of the licensee, that an external audit is appropriate, the Commissioner may direct a licensee to receive an external audit.

(2) If the Commissioner directs a licensee to receive an external audit, that external audit shall include:

(a) Annual financial statements including a balance sheet, statement of operations (income statement), and cash flows, including notes and supplemental schedules prepared in accordance with generally accepted accounting principles;

(b) Assessment of the internal control structure;

(c) Computation of tangible net worth;

(d) Validation of permissible investments;

(e) Verification of adequate fidelity and errors and omissions (E&O) insurance;

(f) Testing of controls related to risk management activities, including compliance and stress testing, if applicable; and

(g) Any other element the Commissioner considers appropriate.

(3) Nothing in this regulation is intended to abrogate a requirement of a licensee to receive an external audit under any other law, rule, regulation, or by-law, policy, or procedure of the licensee.

D. Risk Management.

(1) A licensee shall at all times maintain a risk management program that identifies, measures, monitors, and controls risk sufficient for the size, operational complexity, and overall risk profile of the licensee.

(2) The risk management program shall have appropriate processes and models in place to measure, monitor, and mitigate financial risks and changes to the risk profile of the licensee.

(3) Evidence of risk management activities throughout the year shall be maintained, including findings of issues and the response to address those findings.

E. Authority to Address Risk as Necessary. If risk is determined by a formal review of a licensee to be extremely high, the Commissioner may order or direct the licensee to satisfy additional conditions necessary to ensure that the licensee will continue to operate in a safe and sound manner and be able to continue to engage in the business of money transmission in compliance with state and federal law and regulation.

.09 Maintenance of License.

A. If a licensee does not continue to meet the qualifications or satisfy the requirements that apply to an applicant for a new license, the Commissioner may suspend or revoke the licensee's license in accordance with the procedures established under the Maryland Money Transmission Act.

B. An applicant for a license shall demonstrate that it meets or will meet, and a money transmission licensee shall at all times meet, the requirements in Regulation .18 of this chapter.

.10 Acquisition of Control and Change of Key Individual.

A. Any person, or group of persons acting in concert, seeking to acquire control of a licensee shall comply with Financial Institutions Article, §12-415, Annotated Code of Maryland.

B. Any person, or group of persons acting in concert, seeking the Commissioner's approval under Financial Institutions Article, §12-415, Annotated Code of Maryland, to acquire control of a licensee shall, in cooperation with the licensee, submit an application in a form and in

application or of the sufficiency of the information provided.

F. When an application is filed and considered complete under this regulation, the Commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control. The Commissioner shall approve an acquisition of control pursuant to this regulation if the Commissioner finds that all of the following conditions have been fulfilled:

- (1) The requirements of §§B and C of this regulation have been met, as applicable;
- (2) Following the change in control, the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the licensee will remain consistent with State licensure requirements; and
- (3) That it is in the interest of the public to permit the person, or group of persons acting in concert, to control the licensee.

G. Under the following circumstances, the Commissioner may consider the investigation of an applicant by another State:

- (1) If an applicant avails itself or is otherwise subject to a multistate licensing process:
 - (a) Subject to §G(2) of this regulation, the Commissioner's investigation of the applicant under §F of this regulation may include the investigation results of a lead investigative state; or
 - (b) If Maryland is a lead investigative state, the Commissioner may investigate the applicant pursuant to §F of this regulation and the timeframes established by agreement through the multistate licensing process, except that, in no case shall the timeframe be noncompliant with the application period in Financial Institutions Article, §12-415, Annotated Code of Maryland.
- (2) The Commissioner's investigation of the applicant under §F of this regulation may include the investigation results of the lead investigative state under §G(1)(a) of this regulation if:
 - (a) The Commissioner reasonably determines that the lead investigative state possesses licensing and supervision authority over money transmission in its state substantially similar to the licensing and supervision authority of the Commissioner over money transmission Maryland;
 - (b) The Commissioner reasonably determines that the lead investigative state adequately addresses the applicant's anticipated financial condition and responsibility, financial and business experience, character, and general fitness following the proposed change of control;
 - (c) The Commissioner reasonably determines the lead investigative state has sufficient staffing, expertise, and minimum standards for the purposes of investigating a change of control application; and
 - (d) The Commissioner supplements the investigation of the lead investigative state with any information the Commissioner considers relevant.

H. The Commissioner shall issue a formal written notice of the denial of an application to acquire control within 30 days of the decision to deny the application. The Commissioner shall set forth in the notice of denial the specific reasons for the denial of the application. A licensee whose application is denied by the Commissioner under this regulation may request a hearing within 30 days after receipt of the written notice of the denial pursuant to State Government Article, §10-207, Annotated Code of Maryland.

I. The requirements of Financial Institutions Article, §12-415, Annotated Code of Maryland, as applied to a change of control of a licensee and as provided for in §§A and B of this regulation do not apply to any of the following:

- (1) A person that acts as a proxy for the sole purpose of voting at a designated meeting of the shareholders or holders of voting shares or voting interests of a licensee or a person in control of a licensee;
- (2) A person that acquires control of a licensee as a personal representative, custodian, guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law;
- (3) A public offering of securities of a licensee or a person in control of a licensee, except that, if a single person or group of persons acting in concert acquire control of the licensee as a result of the public offering, the licensee shall obtain the Commissioner's approval under Financial Institutions Article, §12-415, Annotated Code of Maryland, and this regulation; or
- (4) An internal reorganization of a person in control of the licensee if the ultimate person in control of the licensee remains the same.

J. Persons in §I(2)—(4) of this regulation in cooperation with the licensee shall notify the Commissioner within 15 days after the acquisition of control.

K. Streamlined Acquisition of Control.

(1) The requirements of Financial Institutions Article, §12-415, Annotated Code of Maryland, as applied to a change of control of a licensee shall be considered satisfied and no application under §B of this regulation will be required of a person that has complied with and received approval to engage in money transmission under the Maryland Money Transmission Act or was identified as a person in control in a prior application filed with and approved by the Commissioner or by an MSB accredited state pursuant to a multistate licensing process,

(2) If the Commissioner requests additional information in connection with a notice, the notice may not be considered complete until that information is provided to the Commissioner.

(3) If the notice is not disapproved within 30 days after the date on which the notice was determined to be complete, the notice is considered approved.

(4) A licensee whose notice is disapproved by the Commissioner under this regulation may request a hearing within 30 days after receipt of the written notice of the disapproval pursuant to State Government Article, §10-207, Annotated Code of Maryland.

L. Before filing an application or notice under §B or K of this regulation, a person or group of persons acting in concert may request in writing a determination from the Commissioner as to whether the person or group of persons acting in concert would be considered a person in control of a licensee upon consummation of a proposed transaction. If the Commissioner determines that the person or group of persons acting in concert would not be a person in control of a licensee, the proposed person or group of persons acting in concert is not subject to the requirements of Financial Institutions Article, §12-415(b), Annotated Code of Maryland, as applied to a change of control of a licensee.

M. Rebuttable Presumption of Control.

(1) A person is presumed to exercise a controlling influence if the person holds the power to vote, directly or indirectly, at least 10 percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee.

(2) A person presumed to exercise a controlling influence can rebut the presumption of control if the person is a passive investor.

(3) For purposes of determining the percentage of a person controlled by any other person, the person's interest shall be aggregated with the interest of any other immediate family member, including the person's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and any other person who shares that person's home.

.11 Notice and Information Requirements for a Change of Key Individuals.

A. A licensee adding or replacing any key individual shall:

(1) Provide notice in a manner prescribed by the Commissioner as soon as reasonably practicable, but in no event later than 15 days after the effective date of the key individual's appointment; and

(2) Provide information as required by Regulation .06 of this chapter within 30 days of the date on which the notice was provided pursuant to this regulation.

B. Within 90 days of the date on which the notice provided pursuant to this regulation was determined to be complete, the Commissioner may issue a notice of disapproval of a key individual if the competence, experience, character, or integrity of the individual would not be in the best interests of the public or the customers of the licensee to permit the individual to be a key individual of that licensee.

C. A notice of disapproval shall contain a statement of the basis for disapproval and shall be sent to the licensee and the disapproved individual. A licensee receiving a notice of disapproval under this regulation may request a hearing within 30 days after receipt of the written notice of the disapproval pursuant to State Government Article, §10-207, Annotated Code of Maryland.

D. If the notice provided pursuant to this regulation is not disapproved within 90 days after the date on which the notice was determined to be complete, the key individual is considered approved.

.12 Bank Secrecy Act Reports.

A licensee and an authorized delegate shall file all reports required by federal currency reporting, record keeping, and suspicious activity reporting requirements as set forth in the Bank Secrecy Act and other federal and state laws pertaining to money laundering. The timely filing of a complete and accurate report required under this regulation with the appropriate federal agency is considered compliant with the requirements of this regulation.

.13 Authorized Delegates.

A. For purposes of this regulation, "remit" means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

B. Before a licensee may conduct business through an authorized delegate or allows a person to act as the licensee's authorized delegate, the licensee shall:

(1) Adopt, and update as necessary, written policies and procedures reasonably designed to ensure that the licensee's authorized delegates comply with applicable state and federal law;

(2) Enter into a written contract pursuant to Financial Institutions Article, §12-413(b), Annotated Code of Maryland; and

(3) Conduct a reasonable risk-based background investigation sufficient for the licensee to determine whether the authorized delegate has complied and will likely comply with applicable state and federal law.

C. An authorized delegate shall operate in full compliance with the Maryland Money Transmission Act and any regulations implementing

(6) Require the authorized delegate to prepare and maintain records as required by the Maryland Money Transmission Act and any regulations implementing the Maryland Money Transmission Act, or as reasonably requested by the Commissioner;

(7) Acknowledge that the authorized delegate consents to examination or investigation by the Commissioner;

(8) State that the licensee is subject to regulation by the Commissioner and that, as part of that regulation, the Commissioner may suspend or revoke an authorized delegate designation or require the licensee to terminate an authorized delegate designation; and

(9) Acknowledge receipt of the written policies and procedures required under Financial Institutions Article, §12-413(c), Annotated Code of Maryland.

E. If the licensee's license is suspended, revoked, surrendered, or expired, the licensee shall, within 5 business days, provide documentation to the Commissioner that the licensee has notified all applicable authorized delegates of the licensee whose names are in a record filed with the Commissioner of the suspension, revocation, surrender, or expiration of a license. Upon suspension, revocation, surrender, or expiration of a license, applicable authorized delegates shall immediately stop providing money transmission as an authorized delegate of the licensee.

F. An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission. If any authorized delegate commingles any funds received from money transmission with any other funds or property owned or controlled by the authorized delegate, all commingled funds and other property shall be considered held in trust in favor of the licensee in an amount equal to the amount of money net of fees received from money transmission.

G. An authorized delegate may not use a subdelegate to conduct money transmission on behalf of a licensee without the written consent of the Commissioner.

H. A person may engage in the business of money transmission as an authorized delegate only on behalf of a person licensed or exempt from licensure under the Maryland Money Transmission Act.

I. A person that engages in the business of money transmission on behalf of an unlicensed and nonexempt person shall be considered to be providing money transmission services in violation of the Maryland Money Transmission Act and shall be jointly and severally liable with the unlicensed or nonexempt person.

.14 Timely Transmission.

A. Every licensee shall forward all money received for transmission in accordance with the terms of the agreement between the licensee and the sender unless the licensee has a reasonable belief or a reasonable basis to believe that the sender may be a victim of fraud or that a crime or violation of law, rule, or regulation has occurred, is occurring, or may occur.

B. If a licensee fails to forward money received for transmission in accordance with this regulation, the licensee shall respond to inquiries by the sender with the reason for the failure unless providing a response would violate a state or federal law, rule, or regulation.

.15 Refunds.

A. This regulation does not apply to:

(1) Money received for transmission subject to the federal Remittance Rule (12 CFR Part 1005, Subpart B), as amended or recodified from time to time; or

(2) Money received for transmission pursuant to a written agreement between the licensee and payee to process payments for goods or services provided by the payee.

B. Every licensee shall refund to the sender within 10 days of receipt of the sender's written request for a refund of any money received for transmission unless any of the following occurs:

(1) The money has been forwarded within 10 days of the date on which the money was received for transmission and prior to receipt of the request for a refund;

(2) Instructions have been given committing an equivalent amount of money to the person designated by the sender within 10 days of the date on which the money was received for transmission and prior to receipt of the request for a refund;

(3) The agreement between the licensee and the sender instructs the licensee to forward the money at a time that is beyond 10 days of the date on which the money was received for transmission. If funds have not yet been forwarded in accordance with the terms of the agreement between the licensee and the sender, the licensee shall issue a refund in accordance with the other provisions of this regulation;

(4) The refund request does not enable the licensee to:

(a) Identify the sender's name and address or telephone number; or

(b) Identify the particular transaction to be refunded if the sender has multiple transactions outstanding;

(5) The refund is requested for a transaction that the licensee has not completed based on a reasonable belief or a reasonable basis to

C. Contents of Receipt.

(1) Every licensee or its authorized delegate shall provide the sender a receipt for money received for transmission.

(2) The receipt shall contain the following information, as applicable:

(a) The name of the sender;

(b) The name of the designated recipient;

(c) The date of the transaction;

(d) The unique transaction or identification number;

(e) The name of the licensee, NMLS Unique ID, the licensee's business address, and the licensee's customer service telephone number;

(f) The amount of the transaction in United States dollars;

(g) Any fee charged by the licensee to the sender for the transaction; and

(h) Any taxes collected by the licensee from the sender for the transaction.

(3) The receipt required by this regulation shall be in English and in the language principally used by the licensee or authorized delegate to advertise, solicit, or negotiate, either orally or in writing, for a transaction conducted in person, electronically, or by phone, if other than English.

.17 Disclosures for Payroll Processing Services.

A. A licensee that provides payroll processing services shall:

(1) Issue reports to clients detailing client payroll obligations in advance of the payroll funds being deducted from an account; and

(2) Make available worker paystubs or an equivalent statement to workers.

B. If the licensee's client designates the intended recipients to the licensee and is responsible for providing the disclosures required by §A(2) of this regulation, §A of this regulation does not apply to a licensee providing payroll processing services.

.18 Prudential Standards.

A. Financial Responsibility.

In considering the financial responsibility of a licensee, the Commissioner may consider the amount of tangible net worth a licensee maintains in excess of the statutory requirement under Financial Institutions Article, §12-406, Annotated Code of Maryland.

B. Surety Bonds.

A licensee may exceed the maximum required bond amount in Financial Institutions Article, §12-412(d), Annotated Code of Maryland.

C. Maintenance of Permissible Investments.

(1) A licensee shall maintain at all times permissible investments in accordance with Financial Institutions Article, §12-418(a), Annotated Code of Maryland.

(2) Except for permissible investments enumerated in §D(1) of this regulation, the Commissioner, with respect to any licensee, may by order limit the extent to which a specific investment maintained by a licensee within a class of permissible investments may be considered a permissible investment, if the specific investment represents undue risk to customers, not reflected in the market value of investments.

(3) Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations. Permissible investments held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations are considered held in trust for the benefit of those purchasers and holders on a pro rata and equitable basis in accordance with statutes pursuant to which permissible investments are required to be held in Maryland, and other states, as applicable.

(4) Any trust established under this regulation shall be terminated upon extinguishment of all of the licensee's outstanding money transmission obligations.

(5) The Commissioner may allow other types of investments that the Commissioner determines are of sufficient liquidity and quality to be a permissible investment. The Commissioner may participate in efforts with other state regulators to determine that other types of investments are of sufficient liquidity and quality to be a permissible investment.

D. Types of Permissible Investments.

(1) The following investments meet the definition of permissible investments pursuant to Financial Institutions Article, §12-401(r), Annotated Code of Maryland:

(a) Cash (including demand deposits, savings deposits, and funds in those accounts held for the benefit of the licensee's customers in a federally insured depository financial institution) and cash equivalents including ACH items in transit to the licensee and ACH items or

(2) *A letter of credit under §D(1) of this regulation:*

(a) *Shall be issued by a federally insured depository financial institution, a foreign bank that is authorized under federal law to maintain a federal agency or federal branch office in a state or states, or a foreign bank that is authorized under state law to maintain a branch in a state that:*

(i) *Bears an eligible rating or whose parent company bears an eligible rating; and*

(ii) *Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks, credit unions, and trust companies;*

(b) *Shall be irrevocable, unconditional and indicate that it is not subject to any condition or qualification outside of the letter of credit;*

(c) *May not contain reference to any other agreements, documents, or entities, or otherwise provide for any security interest in the licensee; and*

(d) *Shall contain an issue date and expiration date, and expressly provide for automatic extension, without a written amendment, for an additional period of 1 year from the present or each future expiration date, unless the issuer of the letter of credit notifies the Commissioner in writing by certified or registered mail or courier mail or other receipted means, at least 60 days prior to any expiration date, that the irrevocable letter of credit will not be extended.*

(3) *If the issuer of a letter of credit under §D(2) of this regulation issues any notice of expiration or nonextension of that letter of credit, the licensee shall be required to demonstrate to the satisfaction of the Commissioner, 15 days prior to expiration, that the licensee maintains and will maintain permissible investments in accordance with Financial Institutions Article, §12-418(a), Annotated Code of Maryland, upon the expiration of the letter of credit. If the licensee is not able to do so, the Commissioner may draw on the letter of credit in an amount up to the amount necessary to meet the licensee's requirements to maintain permissible investments in accordance with Financial Institutions Article, §12-418(a), Annotated Code of Maryland. Any draw shall be offset against the licensee's outstanding money transmission obligations. The drawn funds shall be held in trust by the Commissioner or the Commissioner's designated agent, to the extent authorized by law, as agent for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations.*

(4) *A letter of credit under §D(1) of this regulation shall provide that the issuer of the letter of credit will honor, at sight, a presentation made by the beneficiary to the issuer of the following documents on or prior to the expiration date of the letter of credit:*

(a) *The original letter of credit (including any amendments); and*

(b) *A written statement from the beneficiary stating that any of the following events have occurred:*

(i) *The filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. §101-110, as amended or recodified from time to time, for bankruptcy or reorganization;*

(ii) *The filing of a petition by or against the licensee for receivership, or the commencement of any other judicial or administrative proceeding for its dissolution or reorganization;*

(iii) *The Commissioner has issued an order of restitution pursuant to an enforcement action against the licensee;*

(iv) *The Commissioner sought the seizure of assets of a licensee pursuant to a judicial or administrative order; or*

(v) *The beneficiary has received notice of expiration or nonextension of a letter of credit and the licensee failed to demonstrate to the satisfaction of the beneficiary that the licensee will maintain permissible investments in accordance with Financial Institutions Article, §12-418(a), Annotated Code of Maryland, upon the expiration or nonextension of the letter of credit.*

(5) *The Commissioner may designate an agent to serve on the Commissioner's behalf as beneficiary to a letter of credit under §D(1) of this regulation if the agent and letter of credit meet requirements established by the Commissioner. The Commissioner's agent may serve as agent for multiple licensing authorities for a single irrevocable letter of credit if the proceeds of the drawable amount satisfy the purposes of the letter of credit under §D(1) of this regulation and are assigned to the Commissioner.*

(6) *The Commissioner may participate in multistate processes designed to facilitate the issuance and administration of letters of credit, including but not limited to services provided by the NMLS and State Regulatory Registry, LLC.*

(7) *Unless permitted by the Commissioner by rule or by order to exceed the limit as set forth in this regulation, the following investments are permissible pursuant to Financial Institutions Article, §12-401(r), Annotated Code of Maryland, to the extent specified:*

(a) *Receivables that are payable to a licensee from its authorized delegates in the ordinary course of business that have not been held by an authorized delegate in excess of the time permitted under Financial Institutions Article, §12-418(b), Annotated Code of Maryland, up to 50 percent of the aggregate value of the licensee's total permissible investments.*

(b) *Of the receivables permissible under §D(7)(a) of this regulation, receivables that are payable to a licensee from a single authorized delegate in the ordinary course of business may not exceed 10 percent of the aggregate value of the licensee's total permissible*

- (i) Has an eligible rating;*
- (ii) Is registered under the Foreign Account Tax Compliance Act;*
- (iii) Is not located in any country subject to sanctions from the Office of Foreign Asset Control; and*
- (iv) Is not located in a high-risk or noncooperative jurisdiction as designated by the Financial Action Task Force.*

E. Eligibility Ratings.

(1) Long-term credit ratings are considered eligible if the rating is equal to A- or higher by S&P, or the equivalent from any other eligible rating service.

(2) Short-term credit ratings are considered eligible if the rating is equal to or higher than A-2 or SP-2 by S&P, or the equivalent from any other eligible rating service.

(3) If the ratings differ among eligible rating services, the highest rating shall apply when determining whether a security bears an eligible rating.

ANTONIO P. SALAZAR