

Defining a Control Person

CONCERNS (include source of concern – ex. FIAP, RFI, etc.)

FIAP expressed concern with a lack of consistency among the states, suggesting streamlining the process to ensure that only appropriately qualified and vetted parties participate in the money transmitter system.

AVAILABLE OPTIONS

USMA

USMA with amendments

Draft new language

POLICY CONSIDERATIONS (including risks)

Individuals that lack the requisite character and fitness to control a licensed money transmitter should not be entrusted with consumer funds.

Lack of consistency among states.

“Power to elect” and “power to exercise control” language gives states the opportunity to vet a control person before the person becomes involved in the financial services business who might not otherwise be investigated, based solely on ownership percentages.

Please note: the following recommendation includes an accompanying Passive Investor Attestation form.

RECOMMENDATION (model statutory language)

(5) "Control" means:

(A) ownership of, or the power to vote, directly or indirectly, at least 10 percent of a class of voting securities or voting interests of a licensee or person in control of a licensee;

(B) power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or 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.

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

For purposes of this [act], the term "control" does not apply to a person that:

(1) is not employed by the licensee;

(2) has no power to vote, directly or indirectly, any class of voting securities or voting interests of a licensee or person in control of a licensee; and

(3) does not participate in decisions relating the day-to-day operations of the licensee.

Any person claiming the exception described herein shall attest to the facts excepting the person from the definition of "control" on a form prescribed by the nationwide multistate licensing system and registry.

Passive Investor Attestation Form

For individuals:

I, [Name], on this date, [Date], swear (or affirm) that I executed this document on my own behalf, that I am attesting to and submitting this document for purposes of being declared a passive investor of [Licensee] and that I agree to and represent the following:

- (1) I do not own or have the power to vote, directly or indirectly, 10 percent or more of a class of voting securities or voting interests of the licensee or person in control of the licensee.
- (2) I do not have the power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial control of the licensee or person in control of the licensee;
- (3) I am not employed by and do not have any managerial duties of the licensee or person in control of a licensee; and
- (4) I do not, in any way, participate in the day-to-day decisions or operations of the licensee.

I verify that I am the named person above and agree to the language as stated.

For entities:

I, [Name], on this date, [Date], swear (or affirm) that I am an authorized representative of [Entity/Fund], that I am able to execute this document on [Entity's] behalf, that I am attesting to and submitting this document for purposes of [Entity] being declared a passive investor of [Licensee] and that I agree to and represent the following:

- (1) [Entity] does not own or have the power to vote, directly or indirectly, 10 percent or more of a class of voting securities or voting interests of the licensee or person in control of the licensee.
- (2) [Entity] does not have the power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial control of the licensee or person in control of the licensee;
- (3) [Entity] is not employed by and does not have any managerial duties of the licensee or person in control of a licensee; and
- (4) [Entity] does not, in any way, participate in the day-to-day decisions or operations of the licensee.

I verify that I am the named person above and agree to the language as stated.

Procedures for Control Persons

CONCERNS (include source of concern – ex. FIAP, RFI, etc.)

The CSBS request for information highlighted the different procedures for control persons among the states. FIAP discussed the difficult process for vetting foreign control persons.

AVAILABLE OPTIONS

Draft new model language

POLICY CONSIDERATIONS (including risks)

Not all states have statutory authority or otherwise require criminal background checks and/or credit reports. An NMLS FBI background check searches and includes state data as well.

Please note: the following recommendation includes accompanying state resource documents.

RECOMMENDATION (model statutory language)

Whenever this [act] requires a person to be approved by the [superintendent] to serve as an organizer, incorporator, director, executive officer, or control person of a licensee, that person shall furnish to the nationwide multistate licensing system and registry all of the following:

(A) The person's fingerprints for submission to the federal bureau of investigation and the [superintendent] for purposes of a national and state criminal history background check;

(B) If the person has resided outside the United States in the last 10 years, the person shall provide an investigative background report prepared by an independent search firm.

(1) At minimum, the search firm shall:

(a) Demonstrate that it has sufficient resources and is properly licensed to conduct the research of the background report; and

(b) Not be affiliated with or have an interest with any individuals it is researching.

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

(a) A comprehensive credit report, including a search of the court data in the countries, states, and towns where the person resided and worked in the contiguous areas;

(b) Criminal records information for the past ten years, including felonies, misdemeanors and violations, including a search of the court data in the countries, states, and towns where the individual resided and worked in the contiguous areas;

(c) Employment history;

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

(e) Regulatory history, including but not limited to securities, insurance, and mortgage-related industries.

(C) Personal history and experience in a form prescribed by the nationwide multistate licensing system and registry, along with authorization for the superintendent and the nationwide mortgage licensing system and registry to obtain both of the following:

i. An independent credit report from a consumer reporting agency; and

ii. Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

Control Events

CONCERNS (include source of concern – ex. FIAP, RFI, etc.)

Both the FIAP and CSBS' request for information discussed differences in state standards and processes for change in control.

AVAILABLE OPTIONS

1. Adopt UMSA
2. Amend the UMSA
3. Draft new model language

POLICY CONSIDERATIONS (including risks)

Inconsistency among the states.

RECOMMENDATION (model statutory language)

Change of control.

- (A) A licensee shall:
 - (1) Submit an application in a form prescribed by the [superintendent] requesting approval of the acquisition; and
 - (2) Submit a nonrefundable fee of [\$2,000] with the request for approval.
- (B) The application required by subsection (A) shall include information regarding the proposed control persons that would have been required by the licensee or control persons as part of the original license or renewal application.
- (C) The [superintendent] shall approve an application for change of control under subsection (A) if, after investigation, the [superintendent] determines that the person or group of persons requesting approval has met the requirements of subsections (A) and (B) and has the competence, experience, character, and general fitness to operate the licensee or person in control of the licensee in a lawful and proper manner and that the public interest will not be jeopardized by the change of control.
- (D) When an application for a change of control under this [article] is complete, the [superintendent] shall notify the licensee of the date on which the application was determined to be complete and:
 - (1) The [superintendent] shall approve or deny the application within [120] days after the date on which the application was determined to be complete; or
 - (2) If the application is not approved or denied within [120] days after the date on which the application was determined to be complete:
 - (a) The application is deemed approved; and
 - (b) The [superintendent] shall permit the change of control under this section, to take effect as of the first business day after expiration of the [120] day period.
- (E) The requirements of subsection (A) do not apply to any of the following persons, but these persons shall notify the [superintendent] within [15] days after the change of control:
 - (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 interests of a licensee or a person in control of a licensee;
 - (2) A person that acquires control of a licensee by devise or descent;
 - (3) A person that acquires control 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;
 - (4) A person that the [superintendent] determines is not subject to subsection (A) based on the public interest.
- (F) Subsection (A) does not apply to a public offering of securities.
- (G) Before filing an application for approval to acquire control of a licensee or person in control of a licensee, a person may request in writing a determination from the [superintendent] as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the [superintendent] determines that the person would not be a person in control of a licensee, the proposed person and transaction is not subject to the requirements of subsections (A) through (C).

Money Transmitter Change of Control Checklist Items:

Uploaded/Filed on NMLS:

1. Advance Change Notice filing
2. Request for agency approval that shall include the following details concerning the proposed acquisition:
 - a. Structure of the transaction
 - b. Source and use of funds information
 - c. Proposed changes resulting from the transaction (management, ownership, business plan, etc.)
3. Paid application fee
4. Post-transaction management chart
5. Post-transaction organizational/ownership chart
6. If acquirer is an entity, provide the acquirer's:
 - a. Financial statements:
 - i. Prior year audit?
 - ii. Most recent quarter unaudited?
 - b. Formation documents
 - c. Ownership chart
7. For any individual who will become a control person after the transaction, control person requirements (background check, credit report, disclosures, etc.)
8. Stock Purchase Agreement or Merger Agreement