



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

GOVERNOR **Gavin Newsom** • COMMISSIONER **Clothilde V. Hewlett**

NOTICE OF RULEMAKING ACTION TITLE 10. CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

NOTICE IS HEREBY GIVEN [Government Code Section 11346.5, Subdivision (a)(1)]

The Commissioner of Financial Protection and Innovation (“Commissioner”) proposes to adopt new regulations under the Debt Collection Licensing Act. Specifically, the Commissioner proposes to amend section 1850 and adopt section 1850.70 of subchapter 11.3 of Title 10 of the California Code of Regulations:

The Department of Financial Protection and Innovation (“Department”) administers and enforces the Debt Collection Licensing Act. The Debt Collection Licensing Act requires licensing of debt collectors that collect consumer debt. The persons subject to licensure is broad and includes businesses and individuals who engage in debt collection or debt buying, or who compose and sell, or offer to compose and sell, forms and other collection media, intended to be used for debt collection.¹ The Debt Collection Licensing Act applies to debt collectors located in California or outside of California seeking to collect consumer debt from California residents.² The Act became operative on January 1, 2022.³

AUTHORITY [Government Code Section 11346.5, Subdivision (a)(2)]

Financial Code section 100003.

REFERENCE [Government Code Section 11346.5, Subdivision (a)(2)]

Financial Code sections 100003, 100020, and 100021.

PUBLIC COMMENTS [Government Code Section 11346.5, Subdivision (a)(17)]

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8, subdivision (a), of the Government Code. The request for hearing must be received by the Department’s contact person designated below no later than 15 days prior to the close of the written comment period.

¹ Fin. Code, § 100002, subd. (j).

² Fin. Code, § 100001, subd. (a).

³ Fin. Code, § 100000.5, subd. (a).

WRITTEN COMMENT PERIOD [Government Code Section 11346.5, Subdivision (a)(15)]

Where to Submit Comments

Any interested person, or his or her authorized representative, may submit written comments on the proposed regulatory action to the Department, addressed as follows, by any of these means:

By Postal Mail

Department of Financial Protection and Innovation
Attn: DeEtte Phelps, Regulations Coordinator
2101 Arena Boulevard
Sacramento, California 95834

By Electronic Mail

Comments may be submitted electronically to regulations@dfpi.ca.gov with a copy to mary.tome@dfpi.ca.gov. Please identify the comments as PRO 01-23 in the subject line and submit the comments in Microsoft Word format, if available.

Time for Comments

Comments may be submitted until March 27, 2024. If the final day for the acceptance of comments is a Saturday, Sunday or state holiday, the comment period will close on the next business day.

INFORMATIVE DIGEST [Government Code Section 11346.5, Subdivision (a)(3)]

Policy Statement and Specific Benefits Anticipated from Regulatory Action [Government Code Section 11346.5, Subdivision (a)(3)(C)]

The objectives of the proposed regulations are to:

- Define the term “net proceeds generated by California debtor accounts”; and
- Specify the information required to be included in an annual report.

On September 25, 2020, Governor Newsom signed Senate Bill 908 establishing the Debt Collection Licensing Act. The Debt Collection Licensing Act requires the Department to license, regulate, investigate, and examine persons engaged in collecting consumer debt. The proposed regulations would clarify statutory terms and specify the requirements relating to annual reports.

Nonmonetary benefits to licensees include clarity on how to calculate net proceeds generated by California debtor accounts, on which the Department bases each licensee's annual assessment,⁴ and clarity on the items required in the annual report, also required under the DCLA.⁵

The regulatory action increases transparency in government and encourages public participation in adopting balanced regulations through compliance with California's administrative rulemaking requirements.

Summary of Existing Laws and Regulations, and Effect of Proposed Action [Government Code Section 11346.5, Subdivision (a)(3)(A)]

The Debt Collection Licensing Act prohibits any person from engaging in the business of collecting consumer debt without first obtaining a license from the Department.⁶ Existing law defines "debt collector" to mean any person who, in the ordinary course of business, regularly, on the person's own behalf or on behalf of others, engages in debt collection, including a debt buyer and any person who composes and sells, or offers to compose and sell, forms, letters and other collection media used or intended to be used for debt collection.⁷ Existing regulations specify the process by which a debt collector can apply for a license, requirements related to surety bonds, requirements to notify the Department of changes to certain information, and the process to surrender a license.⁸

Existing law requires each debt collector licensee to pay annually its pro rata share of all costs and expenses incurred in the administration of the Debt Collection Licensing Act "based upon the proportion of net proceeds generated by California debtor accounts in the preceding year."⁹ The proposed rule would define the term "net proceeds generated by California debtor accounts" and specify the formula to be used in calculating the amount depending on the type of business model.

Existing law requires each debt collector licensee to file an annual report containing certain information.¹⁰ The proposed rule would define certain terms related to the annual report, clarify how to calculate required amounts, mandate certain other information to be included in the annual report, and specify how to submit the report.

⁴ Fin. Code, § 100020.

⁵ Fin. Code, § 100021.

⁶ Fin. Code, § 100001, subd. (a).

⁷ Fin. Code, § 100002, subd. (j).

⁸ See, generally, Cal. Code Regs., tit. 10, § 1850 et seq.

⁹ Fin. Code, § 100020, subd. (a).

¹⁰ Fin. Code, § 100021.

Existing Federal Regulation or Statute [Government Code Section 11346.5, Subdivision (a)(3)(B)]

Debt collectors are subject to the federal Fair Debt Collection Practices Act.¹¹ The Fair Debt Collection Practices Act prohibits debt collectors from engaging in abusive or deceptive debt collection practices. The Federal Trade Commission and the federal Consumer Financial Protection Bureau receive and investigate complaints from consumers concerning debt collection. The proposed regulatory action is not inconsistent with existing federal laws.

Existing State Regulations [Government Code Section 11346.5, Subdivision (a)(3)(D)]

The Commissioner has conducted an evaluation of whether the proposed regulations are consistent with existing state regulations and has concluded that these regulations are consistent with existing regulations under the Debt Collection Licensing Act. Other state laws such as the Rosenthal Fair Debt Collection Practices Act and the Fair Debt Buying Practices Act regulate the activities of debt collectors. The Debt Collection Licensing Act authorizes the Commissioner to enforce these laws. This proposed regulatory action is consistent with existing policy considerations of the Rosenthal Fair Debt Collection Practices Act and the Fair Debt Buying Practices Act. The California Attorney General may investigate complaints concerning debt collectors. This proposed rulemaking is neither inconsistent nor incompatible with other existing state regulations.

FORMS INCORPORATED BY REFERENCE [Title 1, California Code of Regulations, Section 20, Subdivision (c)(3)]

This proposed regulatory action does not incorporate any forms by reference.

DISCLOSURES REGARDING THE PROPOSED ACTION [Government Code Section 11346.5, Subdivision (a)(5) and (6), and (12)(A)]

- Mandate on local agencies or school districts: none.
- Cost or savings to any State agency: none.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: none.
- Other nondiscretionary cost or savings imposed on local agencies: none.
- Cost or savings in federal funding to the state: none.
- Significant effect on housing costs: none.

¹¹ 15 U.S.C. § 1692 et seq.

ECONOMIC IMPACT ON BUSINESS [Government Code Section 11346.5, Subdivision (a)(8)]

The Commissioner has made an initial determination that the proposed regulatory action is unlikely to have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESS [Title 1, California Code of Regulations, Section 4]

This regulatory action may impact small business.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS [Government Code Section 11346.5, Subdivision (a)(9)]

The Department estimates that debt collector licensees may incur absorbable costs from completing the statutorily required annual report. Costs would be largely absorbable because debt collectors are already required to retain records under the Fair Debt Collection Practices Act. Data required in the annual report may be found in records required to be maintained under the Fair Debt Collection Practices Act and inputted into the appropriate place or equivalent data point in the annual report.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS [Government Code Section 11346.5, Subdivision (a)(10)]

The Commissioner has determined:

- The proposed action is unlikely to create or eliminate jobs within the state.
- The proposed action is unlikely to create new businesses or eliminate existing businesses within the state.
- The proposed action is unlikely to expand businesses currently doing business within California.
- As discussed above under the Informative Digest, the proposed action may benefit the health and welfare of California residents by facilitating adequate oversight of debt collectors, which would allow the Department to investigate and ensure that licensees are conducting debt collection activities in accordance with the law.
- No benefits or adverse impacts to worker safety or to the state's environment are anticipated from this regulatory action.

BUSINESS REPORTING REQUIREMENT [Government Code Section 11346.5, Subdivision (a)(11)]

The Department has determined it is necessary for the health, safety, or welfare of the people of this state that the reports required in this regulatory action apply to businesses.

CONSIDERATION OF ALTERNATIVES [Government Code Section 11346.5, Subdivision (a)(13)]

The Commissioner must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed; be as effective and less burdensome to affected private persons than the proposed action; or be more cost-effective to affected private persons and equally effective in implementing the policy and provisions of the Debt Collection Licensing Act.

AVAILABILITY OF THE NOTICE, STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE [Government Code Section 11346.5, Subdivision (a)(16) and (20), and (b)]

As of the date this Notice is published, the rulemaking file consists of this Notice, the Initial Statement of Reasons, the Proposed Text of the regulations, and all the information upon which the proposal is based. The Department will make the entire rulemaking file available for inspection and copying throughout the rulemaking process at the address provided, and from the persons identified, in the "Contact Persons" section of this notice.

The Notice, Initial Statement of Reasons and Proposed Text are also available on the Department's website at www.dfpi.ca.gov. To access the documents from the Department's website, select the "Laws and Regulations" tab under "Licensees" on the home page, select the "Regulations/Rulemaking" link, and then select the "Debt Collection Licensing Act" link.

AVAILABILITY OF CHANGED OR MODIFIED TEXT [Government Code Section 11346.5, Subdivision (a)(18)]

If the Department makes changes which are sufficiently related to the original Proposed Text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the Department adopts, amends or repeals the regulations as revised. A request for a copy of any modified regulation(s) should be addressed to the contact persons named in this notice. The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS [Government Code Section 11346.5, Subdivision (a)(19)]

Upon its completion, the Final Statement of Reasons will be available to the public, and copies may be requested from the contact persons named in this notice or accessed on the Department's website listed above.

CONTACT PERSONS [Government Code Section 11346.5, Subdivision (a)(14)]

Please direct all inquiries concerning the proposed rulemaking action (including requests for copies of the proposed text of the regulations, the initial statement of reasons, or the modified text of the regulation, and questions regarding the timelines or rulemaking status) to:

Department of Financial Protection and Innovation
Attn: DeEtte Phelps
2101 Arena Blvd., Sacramento, CA 95834
Telephone: (916) 839-8995
E-mail: regulations@dfpi.ca.gov

The backup contact person for these inquiries is:

Department of Financial Protection and Innovation
Attn: Mary D. Tomé
300 S. Spring Street, Suite 15513
Los Angeles, California 90013
Telephone: (949) 378-9522
E-mail: mary.tome@dfpi.ca.gov

Dated: January 26, 2024
Sacramento, California