FINAL STATEMENT OF REASONS FOR THE ADOPTION OF RULES UNDER THE DEBT COLLECTION LICENSING ACT PRO 01/23

UPDATED INITIAL STATEMENT OF REASONS (Gov. Code, § 11346.9, subd. (a)(1))

In the Initial Statement of Reasons for this rulemaking action, the Commissioner (Commissioner) of the Department of Financial Protection and Innovation (Department or DFPI) highlighted its objectives: to adopt a definition of "net proceeds generated by California debtor accounts" that is used to determine the pro rata annual assessment payable by debt collectors licensed under the Debt Collection Licensing Act (DCLA); and to clarify the meaning of certain terms used in the DCLA requiring licensees to file an annual report with the Department and to specify additional information which the Commissioner is reasonably requiring in the report concerning the business and operations conducted by the licensee.

The benefits anticipated from this regulatory action include improved oversight of debt collectors by the Department through the information collected in the annual report and the ability to fulfill its statutory mandate through assessments collected from debt collectors.

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

The final regulations meet the Department's objectives. The Department made changes to the originally proposed rules, modifying the text twice to ensure the regulations were consistent with collectors' operations and businesses.

The final regulations allow the Commissioner to fulfill her statutory mandate that the debt collector program created as a result of the DCLA be self-funded through pro rata assessments from licensees and to obtain information needed to best oversee licensees and best implement the DCLA. The final regulations strike a balance between protecting California consumers and avoiding an unnecessary compliance burden on debt collectors.

June 17, 2024 Modifications to the Text

In the June 17, 2024 modifications to the proposed rules, the Department made changes in response to comments received. The Department made all changes reasonable and

necessary to better align the regulations with the facts and collectors' business operations and to protect consumers.

September 11, 2024 Modifications to the Text

In the September 11, 2024 modifications to the proposed rules, the Department made additional reasonable and necessary changes requested by commenters. The Department strove to streamline the rules to make them clear, to accord with collectors' operational realities and to facilitate compliance.

No fiscal impact will result from the proposed regulations. Defining "net proceeds generated by California debtor accounts" will allow DFPI to issue invoices to debt collector licensees to pay their pro rata share of the cost for DFPI to administer the DCLA Program, in compliance with the DCLA. The DCLA mandates that these costs be paid for through pro rata licensee assessments, that the DCLA Program be "self-funded." Assessment amounts will result in no increase or decrease to state revenue. The total amount assessed will equal the total cost for DFPI to administer the DCLA and comply with the statutory mandate.

This is confirmed by the operative statute, Financial Code section 100020, subdivision (a), which states:
Each licensee shall pay to the commissioner its pro rata share of *all costs and expenses reasonably incurred in the administration of this division, as estimated by the commissioner, for the ensuing year and any deficit actually incurred or anticipated in the administration of the division in the year in which the annual fee is levied.* The pro rata share shall be based upon the proportion of net proceeds generated by California debtor accounts in the preceding year after the amount levied pursuant to subdivision (c). (emphasis added)

The Department lists letters in the Initial Statement of Reasons, at pages 12-13. The Department received such letters in response to a second Invitation for Comments in another DCLA rulemaking proposal, PRO 05/21. The Department did not rely on such letters in this proposed rulemaking, PRO 01/23. The Department mistakenly referenced and included the letters in the Initial Statement of Reasons.

ADDITIONAL CLARIFICATION OF NECESSITY FOR MODIFIED TEXT

The Department reiterates the necessity for each of the proposed rules included in its Initial Statement of Reasons published on February 9, 2024.

The Department adds the following additional clarification of necessity for the proposed rules listed below, which were modified in the June 17, 2024 Modified Text.

Section 1850(p)(3): This amendment deleted “a third-party collector” from a separate category of debt collector for which net proceeds is calculated. The amendment replaced the third-party collector category with “all other debt collectors” for efficiency. Using this general category captures all collectors other than debt buyers and debt purchasers, addressed in subdivisions (p)(1) and (p)(2).

Section 1850(p)(4): This amendment removes the “first-party collector” category as moot and unnecessary in light of the related change to section 1850(p)(3).

Section 1850.70(d)(2): The amendment clarifies that the number of debtor accounts required to be reported in a licensee’s annual report includes as a specific category accounts where an attempt was made to collect and the debt was resolved for less than the full amount of the debt.

Section 1850.70(d)(3): The amendment clarifies that the number of debtor accounts required to be reported in a licensee’s annual report includes as a specific category accounts where an attempt was made to collect and payments were made but a balance remains due.

Section 1850.70(e): The amendment moves the former subdivision (h) to subdivision (e) as the most logical placement. This subdivision relates to the previous subdivision (d) and the number of debtor accounts which must be included in the annual report. This amendment clarifies that licensees must include as a separate category in the annual report debts for which collection was attempted but no payments collected. The amendment also specifies that licensees need only include the number of debtor accounts and not also the dollar amount of debts collected. Knowing the number of debtor accounts sufficiently informs the Department of the volume of business activity conducted by each collector in California and allows the Department to robustly oversee collectors and fully implement the DCLA. Knowing the dollar amount for each category provides no additional information which would allow the Department to more robustly oversee and implement the DCLA. Requiring a dollar amount for each sub-category is unnecessary for oversight. Although the data regarding the dollar amounts of debts collected may be of value in informing the Department regarding debt collection in this state, the Department is persuaded that at this time the burden associated with tracking and reporting this data outweighs the benefit of receiving the information.

Section 1850.70(f): The amendment changes the subdivision number from previous subdivision (e) to (f), given the reordering of previous subdivision (h) to subdivision (e).

Section 1850.70(g): The amendment changes the subdivision number from previous subdivision (f) to (g), given the reordering of previous subdivision (h) to subdivision (e).

Section 1850.70(h): The amendment revises this subdivision by removing the previous subdivision (h)(2), as duplicative of the former (h)(1) and therefore unnecessary. The amendment also clarifies that an account should only count and be included in the annual report as one account, even if the account has more than one obligor. The Department is interested in the total number of accounts of each licensee, which indicates the level of business activity in our state. The total number of obligors adds no additional information which would allow the Department to more robustly oversee collectors or implement the DCLA. While the total number of obligors may be of value in informing the Department regarding debt collection in this state, the data is unnecessary at this time because the burden associated with tracking and reporting the data outweighs the marginal benefit of having the information.

The Department adds the following additional clarification of necessity for the proposed rules listed below, which were modified in the September 11, 2024 Modified Text.

Section 1850(p)(1): The amendment uses the term “California debt collection activity” to focus on the activity which generates net proceeds, for clarity and to be consistent with the rest of subdivision 1850(p), which also focuses on and uses the term “debt collection activity.”

Section 1850(p)(2): The amendment clarifies that this subdivision applies to the California debt collection activity of an owner of debt who is not a debt buyer under section 1850(p)(1).

Section 1850(p)(3): The amendment clarifies that this subdivision applies to all debt collection activity not captured within section 1850(p)(1) or section 1850(p)(2).

Section 1850(p)(4): The amendment adds back a paragraph (4) to clarify that the total dollar amount of net proceeds under operative Financial Code section 100021(b)(5) is the sum of the net proceeds for each category of California debt collection activity in sections 1850(p)(1) through (p)(3).

Section 1850.70(d): The amendment clarifies that the number of debtor accounts collected on in the preceding year shall be the sum of sections 1850.70(d) (1), (2) and (3) and that individual numbers for (d)(1), (2) and (3) are not required to be reported.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF FEBRUARY 9, 2024 THROUGH MARCH 27, 2024. (Gov. Code, § 11346.9, subd. (a)(3))

The Department received two letters during the 45-day public comment period. The comments are summarized below, together with the Department's response.

1. Commenter: California Association of Collectors, Inc. (CAC)

Comment No. 1.1: The commenter recommends revising the definition of "net proceeds generated by California debtor accounts" in section 1850(p) by deleting paragraphs (1) through (4), which specify the calculation based on type of collector and its collection activity. The commenter recommends instead compressing them into one generic category requiring the "net amount received for California debtor accounts, which equals all amounts received for the benefit of the licensee, whether received directly or indirectly." The commenter believes that section 1850(p)(4) is unnecessary and is concerned that this subsection suggests that first-party creditors are subject to licensure and annual reporting requirements, which the commenter asserts is not supported by the wording of the DCLA.

Response: The Department declines to make the requested change. The suggested replacement raises additional questions by being too generic and leaving open to question whether any amounts are to be deducted from amounts received and the meaning of "received directly or indirectly." The proposed text is intentionally specific to eliminate questions and should remain as written.
The Department disagrees with the commenter's assertion that the DCLA contains language exempting first-party creditors. No such language or exemption exists in the DCLA. The DCLA does not exempt creditors collecting their own debt. The DCLA does exempt entities licensed under certain other laws administered by DFPI.[1] Entities licensed under the DCLA and other laws administered by the Department shall include in the DCLA annual report only information pertaining to the debt collection activity for which they obtained a DCLA license.

[1] Fin. Code, § 100001, subds. (b) and (c)

Comment No. 1.2: The commenter recommends eliminating paragraphs (1) through (3) of section 1850.70(d), which require licensees to include in the annual report the total number of debtor accounts collected on in the preceding year based on all collection results: collected in full, partial collection with balance discharged, and partial collection with balance owing. The commenter suggests replacing the three paragraphs by compressing into them one generic section requiring licensees to include the number of debtor accounts "for which a payment was applied."

Response: The Department declines to make the requested change. CAC's comment reflects a misunderstanding of the proposed text. DFPI is not asking for three metrics in paragraphs (1) through (3). Rather, DFPI is simply asking for "the *sum"* of three different collection results (full, partial and balance discharged and partial and balance owing) to clarify that all payments collected are to be included in the sum total. DFPI is not asking for a breakdown by category. Given that CAC states that "California debt collectors currently track the dollar value of collections and the number of payments received from debtors," requesting the sum of collections seeks no additional information nor imposes any additional burden on collectors. Collectors already have this information. The rule's specificity is to eliminate questions asking if partial payments are to be included in the total number of debtor accounts collected on.

Comment No. 1.3: The commenter recommends revising the definition of "face value dollar amount of California debtor accounts in the licensee's portfolio in the preceding year" in section 1850.70(f) to all "active" accounts. The commenter further recommends adding the following sentence at the end of this section with its definition of active: "For purposes of this section, an active account is one for which a licensee placed a telephone call, sent correspondence, furnished credit reporting data, or applied a payment in the preceding calendar year."

Response: The Department declines to adopt the requested change because the change is inconsistent with the data sought by the Department. A debt is an asset subject to collection at any time. Until the asset is permanently retired and no longer an asset of the collector, attempts can be made to resurrect and collect upon the debt. Therefore, unless permanently retired, the debt must be reported to the Department.

Comment No. 1.4: The commenter recommends revising section 1850.70(g), which requires licensees to list in the annual report the "number of California debtor accounts in the licensee's portfolio as of December 31 of the preceding year." As in its previous comment, CAC recommends limiting the requirement to "active" accounts. The commenter also recommends deletion of subdivision 1850.70(g)(2), asserting that (g)(2) is duplicative of section 1850.70(g)(1).

Response: The Department declines in part and adopts in part the requested change. See the Department's Response 1.3 as its reasons for declining to limit accounts to "active" accounts. The Department agrees that subsection (g)(2) duplicates (g)(1) and is therefore unnecessary. The Department adopts this second part of CAC's Comment 1.4 and removed (g)(2) in the Modified Text.

Comment No. 1.5: The commenter recommends removing section 1850.70(h), which requires licensees to include in the annual report "the total number and dollar amount of California debtor accounts for which collection was attempted, but not successfully collected or resolved, during the preceding calendar year." Alternatively, if the Department is not willing to remove this section, the commenter asks that the section be limited to "active" accounts.

Response: The Department declines in part and adopts in part the requested change. CAC asserts that "many [collectors] do not track the dollar amount of payments on which collection is successful or unsuccessful" and would require licensees to make costly system modifications for information not required by statute.

DFPI agrees that requiring the dollar amount of uncollected debt is unnecessary at this time and has removed this requirement in the Modified Text. DFPI agrees that confusion was caused by the placement of this subdivision as subdivision (h). DFPI clarifies that the purpose of this section is to ascertain the number of debtor accounts for which collection was attempted but no payments received, the only category not covered by the information required under subdivision (d). DFPI reordered this subdivision in the Modified Text, placing the former subdivision (h) directly following subdivision (d), renumbered as subdivision (e).

2. Commenter: Receivables Mgmt. Assoc. Intl. (RMAI)

Comment No. 2: The commenter suggests no specific text changes. Rather, RMAI makes general objection to section 1850.70 subdivisions (g) and (h) asserting that these subdivisions "have no intrinsic value to the State of California in the licensing and regulation of debt collectors."

RMAI asserts that "The contents of section 100021 as drafted were specifically related to the prior calendar year whereas these statistics are based on the entire portfolio, including inactive or dormant accounts where collection activity will never occur in the future."

Response: The Department repeats its Responses to Comments 1.4 and 1.5, reiterating that the Department agrees that subdivision (g)(2) duplicates (g)(1) and has removed (g)(2) in the Modified Text. DFPI also agrees that requiring the dollar amount of uncollected debt in subdivision 1850.70(h) is unnecessary and has removed this requirement in the Modified Text. DFPI also reordered subdivision 1850.70(h) in the Modified Text, placing the former subdivision (h) directly following subdivision (d), renumbered as subdivision (e).

Section 1850.70clarifies and implements Financial Code Section 100021(a)(1) through (a)(4). These clarifications will eliminate industry questions.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD OF JUNE 17, 2024 THROUGH JULY 3, 2024 (Gov. Code, § 11346.9, subd. (a)(3))

The Department received seven comments during this 15-day public comment period.

1. Commenter: American Financial Services Association

Comment No. 1.1: The commenter objects to the deadline for comments, noting that the deadline "allows just over two weeks to feed-in to the rulemaking process. We do not believe that this is adequate (indeed, we believe it is unusually short)."

Response: The Department disagrees with the commenter. Government Code section 11346.8, subdivision (c), requires modified proposed rules be made available for public comment for "at least 15 days." The Department complied with the statute. The Department provided 16 days for comment.

Comment No. 1.2: The commenter objects to the removal of section 1850(p)(4), the "first-party collector" category specifying how "first-party collectors" should calculate their net proceeds from California debt collection activity, and the change in section 1850(p)(3) from "third-party collectors" to "all other debt collectors." The commenter argues that it is unclear which category applies to its members, assignees of retail installment contracts, including auto finance companies which are collecting their own debt, assigned from the related auto dealer. The commenter asserts that these changes cause confusion among its members who do not know which category applies to them: "all other debt collectors," "debt buyers" or "purchasers of debt that has not been charged off and is not in default" and that clarification is needed.

Response: The Department agrees with commenter and has revised section 1850(p) in the Second Modified Text. The Department determined it best not to use the term "first-party collector" in this rulemaking. First-party collectors are not excluded from the DCLA nor is the term defined in the DCLA. Using the term in the regulations may lead to confusion and a lack of clarity. However, the Department modified section 1850(p)(2) to cover entities such as collectors who collect only their own debt. In this scenario, the entity will include in its calculation of net proceeds only "the amount the owner receives in fees and other charges from debtors that it would not have received had the debt been paid on time, before deducting costs and expenses."

Comment No. 1.3: The commenter objects to the revisions to section 1850(p)(2), arguing that the modified proposed text could be read to include current debt. The commenter asserts that the DCLA was never intended to cover current debt, only defaulted debt. The commenter also asks the Department to clarify the meaning of "defaulted" and to define "costs and expenses" used in this section.

Response: The Department agrees in part and declines in part. The Department is revising section 1850(p)(2) to clarify that net proceeds does not include regular payments of current debt paid on time but, rather, includes amounts received in late fees which the collector would not have received had the debt been paid on time. The Department declines to define "default" or "costs and expenses." The meaning of "defaulted" will be specified in and subject to the written contractual agreement of debt. "Costs and expenses" have a commonly understood meaning. Attempting to include every cost or expense within a definition adds no value and could result in a cost or expense being inadvertently omitted as each entity will have different costs and expenses.

2. Commenter: Caley & Associates

Comment No. 2.1: The commenter makes no specific request to modify section 1850(p)(3), but asks for clarification. The commenter is a litigation firm that represents secured luxury automobile finance companies that own the note and are secured parties. The firm is paid through billing for hourly fees or a preset flat amount to file suit to recover the vehicle and a judgment for any balance owing. The firm advances costs of litigation which are then reimbursed by its clients. These costs are not additional income to the firm. The firm is concerned that the Modified Text would require it to include these reimbursed costs in the calculation of net proceeds.

Response: The commenter makes no specific request to modify section 1850(p)(3). Nonetheless, the Department notes that the rule is clear as written. The prefatory paragraph of section 1850(p) states that net proceeds means "the amount *retained* by a

debt collector from its California debt collection activity." (emphasis added) As stated in its comment letter, the firm does not retain costs of litigation. These costs do not represent firm profits. Rather, these costs are *the client's* costs, not the firm's. The firm is simply reimbursed for client costs advanced by the firm. For all these reasons, the applicability of the section is clear.

Comment No. 2.2: Again, the commenter makes no specific request to modify text. Rather, the commenter asks for clarification on the information to be included in the annual report under section 1850.70(d). Commenter asks if it should include only judgments within the three categories itemized in (d)(1), (2) and (3) or include all judgments obtained with no activity.

Response: The Department notes that the plain language of sections 1850.70(d) and (e) answer the commenter's question. Section 1850.70(d) requires collectors to include in their annual reports the sum of debtor accounts collected on in the preceding year which were collected in full, debtor accounts resolved for less than the full amount of the debt and debtor accounts where payments were made but a balance remains owing. If the licensee has no debtor accounts within some of these categories, none will be included. The sum of the three categories specified in section 1850.70(d)(1), (2) and (3) will be the number listed in the licensee's annual report. Finally, section 1850.70(e) requires collectors to include the number of debtor accounts for which collection was attempted but no payments collected.

Comment No. 2.3: Again, the commenter makes no specific request to modify text. Rather, the commenter asks whether section 1850.70(g), which requires reporting "the total amount owed by all California debtors…as of December 31 of the preceding year… regardless of when the accounts entered the portfolio" means all accounts no matter when the judgment was obtained during the preceding year or includes all judgments obtained prior to the preceding year.

Response: The Department notes that the plain language of sections 1850.70(g) answers the commenter's question. The Department added "regardless of when the accounts entered the portfolio" to include all outstanding accounts. This section requires information "for the preceding year," which means all accounts which were outstanding in the preceding year. The section does not require reporting the month in which the judgment was added.

Comment No. 2.4: Again, the commenter makes no specific request to modify text. Rather, the commenter asks a question regarding section 1850.70(h): whether "the number of California debtor accounts in the licensee's portfolio as of December 31 of the

preceding year" means "the total of each and every judgment obtained on behalf of our clients in the preceding year, regardless of collection activity."

Response: The Department notes that the plain language of sections 1850.70(h) asks for number of debtor accounts in the licensee's portfolio, without regard to whether or when a judgment has been obtained or collected on.

3. Commenter: California Association of Collectors, Inc.

Comment No. 3: The commenter again asserts and requests that the Department require information regarding "active" accounts only. The commenter specifically requests that section 1850.70(g) be amended to request the face value of debtor accounts for *active* accounts and proposes adding to this section the definition of "active" previously requested in its comment letter to the original proposed rules: "For purposes of this section, an active account is one for which a licensee placed a telephone call, sent correspondence, furnished credit reporting data, or applied a payment in the preceding calendar year.. Similarly, the commenter requests amending section 1850.70(h) to require the "number of *active* California debtor accounts in the licensee's portfolio as of December 31 of the preceding year."

Response: The Department declines to make the requested change, for the reasons stated in its Response to Comment No. 1.3.

4. Commenter: California Chamber of Commerce

Comment No. 4: The commenter objects to sections 1850.70(d) and (e), asserting that "the four categories concern confidential and proprietary information," that "[t]his information is sensitive information that companies, in particular publicly traded companies, do not want competitors or the general public to be privy to" and that the "DFPI has not explained why these details are needed or what use this information would have." The commenter is particularly concerned about providing information about accounts resolved for less than the balance owing. The commenter argues that this information combined with the other information provided in the annual report would reveal a licensee's propriety business structure. If the Department insists on requiring this information, the commenter asks that the information be kept confidential and not made available to the public.

Response: The commenter misinterprets the referenced sections. Section 1850.70(d) requires "the *sum*" of its three categories, not specific numbers for each category.

Nonetheless, because this commenter misunderstood this section, the Department modified this section in the Second Modified Text to add more specific language reiterating that the total number of debtor accounts collected on in the preceding year "shall be *the sum* of paragraphs (1), (2) and (3) of this subdivision" and that "[i]ndividual numbers for paragraphs (1), (2) and (3) are not required to be reported."
In requiring only the sum of the three categories of section 1850.70(d), the final text of sections 1850.70 (d) and (e) maintains industry privacy and proprietary information but provides important information about the current state of the debt collection industry, the financial condition of consumers and California's economy generally.

5. Commenter: California Financial Services Providers Association

Comment No. 5.1: The commenter believes that 15 days is an insufficient amount of time to comment on the proposed changes to the proposed rules.

Response: The Department disagrees with the commenter. Government Code section 11346.8, subdivision (c), requires modified proposed rules be made available for public comment for "at least 15 days." The Department complied with the statute. The Department provided 16 days for comment.

Comment No. 5.2: The commenter is a trade association comprised of first-party lenders and other Department licensees, including finance lenders, payday lenders and money transmitters. The commenter objects to the removal of section 1850(p)(4), asserting that the former paragraph (4) applied to its first-party lender members and that the only remaining paragraph possibly relevant is paragraph (3), applicable to "all other debt collectors." However, the commenter argues that paragraph (3) has two flaws: 1. First-party lenders do not have "clients." They are collecting for themselves. 2. Paragraph (3) would require first-party lenders to include in their calculation of "net proceeds" payments from performing obligations. The commenter argues that this is not the intent of the DCLA. The commenter posits the following alternative language to the Department's proposed modified section 1850(p): " For persons who are defined as debt collectors because they are either first-party lenders or assignees standing in the shoes of first-party lenders, and who hold and/or collect on portfolios that consist primarily of performing debt obligations, this is equal to the amount of collection-related fees it collects during the reporting year, excluding the principal and the contracted-for interest on the obligation, but including the differential between the contracted-for interest and any default-rate attributable interest."

Response: The Department agrees. The Department amended section 1850(p)(2) to clarify that net proceeds does not include regular payments of current debt paid on time,

but rather, includes amounts received in late fees which the collector would not have received had the debt been paid on time.

6. Commenter: Receivables Mgmt. Assoc. Intl.

Comment No. 6: The commenter has the same concern regarding section 1850.70(d) as that of commenter California Chamber of Commerce. However, the commenter states that " [i]f DFPI is asking for the number comprising the "sum" total of these three data sets to be inserted into the DFPI annual report form, RMAI is fine with the proposed rule and how it will be implemented."

Response: The Department modified this section in the for the reasons stated in its Response to Comment 4.1.

7. Commenter: Rogers Jewelry Co.

Comment No. 7: The commenter objects to the removal of section 1850(p)(4), the "first-party collector" category specifying how "first-party collectors" should calculate their net proceeds from California debt collection activity, upon which pro rata assessments are determined. The commenter asserts that this category should be reinstated and that the commenter, a jewelry company which collects only its own debt, should not be included in the "all other debt collector" category of modified section 1850(p)(3).

Response: The Department agrees with the concern and revising section 1850(p). The Department determined it best not to use the term "first-party collector" in this rulemaking. First-party collectors are not excluded from the DCLA nor is the term defined in the DCLA. Using the term in this rulemaking may lead to confusion and a lack of clarity. However, the Department modified section 1850(p)(2) to cover entities, such as the commenter, that collect only their own debt. In this scenario, the entity shall include in its calculation of net proceeds only "the amount the owner receives in fees and other charges from debtors that it would not have received had the debt been paid on time, before deducting costs and expenses."

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD OF SEPTEMBER 11, 2024 THROUGH SEPTEMBER 27, 2024 (Gov. Code, § 11346.9, subd. (a)(3))

The Department received four comments during this 15-day comment period.

1. Commenter: California Association of Collectors, Inc.

Comment No. 1.1: The commenter asks that section 1850(p)(2) be deleted from the definition of "net proceeds generated by California debtor activity," asserting that this section appears to apply to first-party collectors and that first-party creditors were never intended to be covered under the DCLA. The commenter contends that, "until the Department finalizes its scope regulations (currently contained in PRO 05-21), proposing to require entities other than debt buyers and third-party debt collectors to submit specified information in annual reports is inappropriate."

Response: The Department declines to make the requested change. The Department must implement the DCLA as written. The DCLA does not exempt creditors collecting their own debt. The DCLA does exempt entities licensed under certain other laws administered by DFPI.[2] Entities licensed under the DCLA and other laws administered by the Department shall include in the DCLA annual report only information pertaining to the debt collection activity for which they obtained a DCLA license.

Comment No. 1.2: The commenter requests clarification on whether subdivisions 1850.70(g) and (h) are seeking information about all debtor accounts or only on debtor accounts on which amounts are owed. Similarly, the commenter requests clarification, generally, on whether the Department seeks information only on "active" accounts or all accounts.

Response: The Department declines to revise the referenced sections, as unnecessary. The Department repeats and reiterates its Response to Comment No. 1.3 in the Initial Notice Period, above.

The DCLA contains no provision limiting it to "accounts on which amounts are owed" or "active" accounts. Moreover, as long as an account remains on a collector's books, it is subject to attempts at revival and collection, even if collection on the debt is past the statute of limitations. Indeed, the commenter acknowledges this, stating that "Under California case law, debts do not extinguish until and unless an affirmative action is taken to extinguish them. Thus, even if a debt is beyond the statute of limitations for collections, it *technically* remains owed."

Comment No. 1.3: The commenter asks the Department to amend the Second Modified Text to specify how the Department will comply with Financial Code section 100021(b),

[2] Fin. Code, § 100001, subds. (b) and (c)

which states: “The individual annual reports filed pursuant to this section shall be made available to the public for inspection.” The commenter specifically requests that “the Department make individual licensee's annual reports available only to those who have complied with the Public Records Act process….”

Response: The Department declines to amend the Second Modified Text to make the requested change. The requested revision is unnecessary. In implementing the DCLA, the Department will follow the law. The Department will adhere to the California Public Records Act (PRA),[3] including excluding documents from disclosure which are exempt from disclosure under the PRA.

2. Commenter: California Chamber of Commerce

Comment No. 2: The commenter asks the Department to modify the text to specify that individual annual reports will be made available to the public only upon request and may be redacted to protect licensees’ sensitive information.

Response: The Department declines to make the requested change as it is unsupported by the DCLA and unnecessary. Financial Code section 100021(b) specifies that licensees’ annual reports shall be made available to the public for inspection. It is not limited to inspection “upon request.” The request is inconsistent with the statutory language. However, the commenter’s concerns should be assuaged for the same reasons stated in the Department’s Response to Comment 1.3, which applies and which the Department repeats and reiterates here.

3. Commenter: Receivables Mgmt. Assoc. Intl.

Comment No. 3: The commenter raises the same concern as the previous two commenters. While acknowledging that Financial Code section 100021(b) specifically provides that individual licensee annual reports shall be made available to the public, the commenter asks that DFPI follow the PRA process and “be careful to not share confidential and proprietary information.”

Response: The Department refers to its Response to Comment No. 1.3 above, which applies equally here.

4. Commenter: R. Paul Soter, Jr.

[3] Gov. Code, § 7920.000 et seq.

Comment No. 4.1: The commenter states that a 15-day comment period is too short and precludes a full review by his client base and a "workmanlike" comment letter by him.

Response: The Department disagrees with the commenter. The 15-day comment period complies with the applicable statute, Government Code section 11346.8, subdivision (c), which requires modified proposed rules be made available for public comment for "at least 15 days." The Department provided 16 days for comment.

Comment No. 4.2: The commenter interprets section 1850(p)(3), the category applicable to "all other California debt collection activity," as applicable to loan servicers when collecting debt which is current and not in default. The commenter proposes revising section 1850(p)(3) and adding a new section 1850(p)(4) specifying that only fees specific to delinquent debt such as late fees are to be included in calculating net proceeds.

Response: The Department declines to make the requested change as it is unnecessary. The commenter is concerned about the impact of this section on loan servicers. However, loan servicers, depending on the type of debt being collected, are licensed under the California Financing Law (CFL), the California Residential Mortgage Lending Act (CRMLA) and the Student Loan Servicing Act (SLSA). The DCLA exempts persons licensed under the California Financing Law, the California Residential Mortgage Lending Act and the Student Loan Servicing Act. Therefore, typically loan servicers are not subject to the DCLA.

Comment 4.3: The commenter believes that the DCLA does not give the Department jurisdiction over loan servicers collecting on performing obligations. The commenter believes the Department is trying to assess a loan servicer's entire portfolio-of both performing obligations and those due and owing-and that such exceeds the Department's authority under the DCLA and standards of reasonableness.

Response: The Department disagrees and believes the comment is based on a misconception. In addition to the fact that loan servicers licensed under the CFL, the CRMLA or the SLSA are exempt from the DCLA, as noted above in the Department's Response to Comment No. 4.2, section 1850(p)(2) provides that "net proceeds generated by California debtor accounts" upon which assessments will be based, includes fees and other charges from debtors *that the [debt] owner would not* have *received had the debt been paid on time. (emphasis added)* Performing loans and their contractually agreed principal and interest paid on time are not included in the definition.

<u>ALTERNATIVES THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES (Gov. Code, § 11346.9, subd. (a)(5))</u>

No reasonable alternative considered by the Commissioner, or that have otherwise been identified and brought to the attention of the Commissioner, would be as effective and less burdensome to affected private persons, or would lessen any adverse impact on small businesses.

ALTERNATIVES DETERMINATION (Gov. Code, § 11346.9, subd. (a)(4))

The Department has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purposes for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The regulations adopted by the Department are to define "net proceeds" necessary to calculate licensees' annual assessments, to clarify terms used in the DCLA regarding annual reports and to specify additional information the Commissioner is reasonably requiring be added to the annual report. The proposed regulations are the only provisions that define net proceeds, clarify terms related to annual reports and specify additional information to be included in annual reports. These rules will allow the Department to fully implement the DCLA, thereby fulfilling its statutory mandate and ensure the Department maintains oversight of collectors. Except as set forth and discussed in the summary and responses to comments, no other alternative has been proposed or otherwise brought to the Department's attention that is equally effective.

LOCAL MANDATE DETERMINATION (Gov. Code, § 11346.9, subd. (a)(2))

The Commissioner has determined that the adoption of these regulations does not impose a mandate on local agencies or school districts.