



STATE OF CALIFORNIA

# Department of Financial Protection and Innovation

GOVERNOR **Gavin Newsom** • COMMISSIONER **Manuel P. Alvarez**

## INITIAL STATEMENT OF REASONS FOR REGULATIONS UNDER THE DEBT COLLECTION LICENSING ACT PRO 02-20

As required by Section 11346.2 of the Government Code, the Commissioner of the California Department of Financial Protection and Innovation (“Commissioner”) sets forth below the reasons for the following proposed amendments to subchapter 11.3 of Title 10 of the California Code of Regulations (“regulations”). The Department of Financial Protection and Innovation (“Department”), formerly the Department of Business Oversight, administers the Debt Collection Licensing Act (“Act”) and regulations.

### Article 1. Definitions.

Adopt: Section 1850.

### Article 2. Application for Licensure and Related Forms.

Adopt: Sections 1850.6, 1850.7, 1850.8, 1850.9, 1850.10, 1850.11, 1850.12, 1850.13, 1850.14, 1850.15, and 1850.16.

### Article 3. Requirement to Maintain Current Information.

Adopt: Sections 1850.30, 1850.31 and 1850.32.

### Article 4. Surety Bond.

Adopt: Section 1850.50.

### Article 5. Surrender of License.

Adopt: Sections 1850.60 and 1850.61.

### PROBLEM STATEMENT & SPECIFIC PURPOSE OF REGULATIONS [Government Code Section 11346.2, Subdivision (b)(1)]

The proposed rulemaking would adopt the license application forms, requirements to obtain a license as a debt collector, and other requirements related to licensure. The Legislature recently enacted the Act to require persons engaging in collecting consumer debt to be licensed and to authorize the Department to license, regulate, investigate and

examine these persons.<sup>1</sup> The class of persons subject to licensure is broad and includes businesses and individuals who engage in consumer debt collection or debt buying, or who compose and sell, or offer to compose and sell, forms and other collection media used for debt collection.<sup>2</sup> The Act applies to debt collectors located in California or outside of California seeking to collect consumer debt from California residents.<sup>3</sup>

Prior to enactment of the Act, debt collectors were not required to be licensed in California. Their activities were subject to California's Rosenthal Fair Debt Collection Practices Act,<sup>4</sup> which prohibits debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts, and the Fair Debt Buying Practices Act,<sup>5</sup> which requires debt buyers to maintain and provide specified documents proving the alleged debtor owes the debt and the amount of the indebtedness is correct, and to provide disclosures to consumers when attempting to collect debts that are beyond the statute of limitations. These laws, however, do not provide for government oversight of debt collection practices. The Act authorizes the Commissioner to enforce the requirements of the Rosenthal Fair Debt Collection Practices Act and the Fair Debt Buying Practices Act.

The Act is operative on January 1, 2022 and requires the Commissioner to allow debt collectors to apply for a license before that date and to operate pending the Commissioner's approval or denial of the application. This proposed rulemaking would adopt the license application and related requirements to permit debt collectors to apply for a license before January 1, 2022.

The Department anticipates adopting additional regulations later in 2022 to, among other things, specify the requirements for maintaining books and records and set forth the amounts required for a surety bond based on a licensee's volume of debt collection activity.

This rulemaking action proposes to:

- Provide the process and requirements to apply for a license as a debt collector, including for affiliates applying for a single license;
- Require applicants to apply for a license and maintain the license through the Nationwide Multistate Licensing System & Registry ("NMLS") and identify the California-specific documents and information that must be filed with NMLS and the timeframes for filing the information;

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<sup>1</sup>Sen. Bill No. 908 (Chap.163, Stats. 2020.)

<sup>2</sup>Fin. Code, § 100002 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 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, or a debt buyer as defined in Section 1788.50 of the Civil Code.

<sup>3</sup>Fin. Code, § 100001, subd. (a).

<sup>4</sup>Civ. Code, § 1788 et seq.

<sup>5</sup>Civ. Code, § 1788.50 et seq.

- Specify the information required to enable the Commissioner to investigate applicants to determine whether they meet the standards for licensure;
- Provide the processes to challenge information entered in NMLS by the Commissioner, to submit and maintain a surety bond, to surrender a license, and to change information in the license application, including adding new branch offices, changing the location of an existing branch office or making changes to key personnel; and
- Specify the acts that may constitute grounds for the Commissioner to deny a license.

## PROPOSED RULES

### Section 1850. Definitions.

The Department proposes to adopt Section 1850 to define certain terms used in the proposed regulations. The definitions are necessary to help applicants and licensees understand the process and requirements to apply for a debt collector license, which may help avoid misunderstandings and unnecessary delays in issuing licenses.

Subsection (a) defines “affiliate” to mean any person controlling, controlled by, or under common control with, the specified person, directly or indirectly, through one or more intermediaries, and includes affiliated companies. Subsection (a) clarifies that an affiliate is an applicant for purposes of the Act. Subsection (b) defines “applicant” to mean any person, including any of its affiliates, who applied for a license under the Act. Subsection (e) defines “control” to mean possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise, and provides that a person who, directly or indirectly, owns, controls, holds the power to vote, or holds proxies representing, 10% or more of the then outstanding voting securities issued by another person is presumed to control such other person, and clarifies that the Commissioner may determine whether a person in fact controls another person.

The Act allows affiliated companies to be licensed under a single license and requires the names of all the affiliated companies to be listed on the license.<sup>6</sup> The Act uses the terms “affiliate” and “affiliated company” interchangeably. The Act does not define what constitutes an affiliate or affiliated company for purposes of applying for a license and requires the Commissioner to define the term by regulation.<sup>7</sup> The proposed definition of affiliate in subsection (a) would specify that the ability to control or control are factors for determining whether a person is an affiliate and “affiliate” and “affiliated company” have the same meaning for purposes of licensure under the Act. Subsection (e) clarifies when control exists between persons for purposes of being affiliated. Whether control exists between persons is a fact-specific determination and therefore subsection (e) allows the Commissioner to decide whether a person controls another person.

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<sup>6</sup>Fin. Code, §§ 100003, subd. (b)(2), and 100004(c).

<sup>7</sup>Fin. Code, § 100003, subd. (b)(2).

Subsections (a) and (b) clarify that an affiliate is also an applicant for purposes of applying for a license. The Act requires the Commissioner to investigate applicants to determine whether they are eligible for a license.<sup>8</sup> While the Act allows affiliated companies to be under a single license, it does not exempt them or their key personnel from being investigated by the Commissioner. The proposed definitions in subsections (a), (b) and (e) are necessary to provide clarity to affiliates and affiliated companies seeking to apply for licensure under a single license.

Subsection (c) defines “branch office” to mean a location other than the applicant’s principal place of business identified in a license application or an amended application. The Act refers to branch offices but does not define the term. An applicant is required to provide information on all branch offices, including the names of branch managers. Information on debt collection activity being conducted at all locations is necessary for the Department to effectively regulate the industry. The definition is necessary to distinguish branch offices from the applicant’s principal place of business, which may help prevent misunderstandings and ensure the Department receives the information needed to process the license application.

Subsection (d) defines “Commissioner” to mean the Commissioner of Financial Protection and Innovation and subsection (g) defines “Debt Collection Licensing Act” to mean California Financial Code section 100000 et seq. The Act requires individuals and businesses to obtain a license to engage in consumer debt collection. Some applicants may be unfamiliar with California regulatory governance and therefore the definitions in subsections (d) and (g) are necessary to identify the California regulator of the debt collection industry and the law authorizing the adoption of these regulations.

Subsection (f) defines “debt buyer” by adopting in whole the definition in Civil Code section 1788.50; “debt collector” in subsection (h) by adopting in whole the definition in Financial Code section 100002; “principal officers” in subsection (p) by adopting in whole the definition in Financial Code section 100009, subdivision (c); and “individual” in subsection (l) to mean a natural person. Including the definitions in the regulations is necessary to help persons determine whether they are subject to licensure and the individuals associated with the applicant who are subject to investigation.

Subsection (n) defines “NMLS” to mean the Nationwide Multistate Licensing System & Registry and subsections (i), (j) and (k) define the NMLS forms MU1, MU2 and MU3 to mean, respectively, the form used to provide information on the company (or sole proprietor); the form used to provide information on individuals who own or control the company; and the form used to provide information on the company’s branch offices. Applicants must use these forms to file information to apply for and maintain a debt collector license. The definitions in these subsections are necessary to help applicants understand the forms they must complete and file with NMLS to obtain a license.

Subsection (m) defines “licensee” to mean any person who is licensed under the Act and clarifies that “licensee” includes any person listed on the license. The definition is necessary to clarify that each affiliate under a single license is a licensee and that the requirements and prohibitions in the Act and these regulations apply to all of them.

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<sup>8</sup> Fin. Code, § 100004, subd. (a).

Subsection (o) defines “policies and procedures” to mean the policies and procedures a licensee is required to develop to promote compliance with the Act pursuant to Section 100019, subdivision (a), of the Financial Code. Section 1850.7 of the proposed regulations require applicants to file their policies and procedures with NMLS as part of the license application. The definition is necessary to clarify the filing requirement to avoid any misunderstanding concerning the information that must be filed to obtain a license.

#### Section 1850.6. Electronic Filings.

The Department proposes to adopt in Section 1850.6 rules for electronic filings. Subsection (a) designates NMLS to receive applications and other filings, and to collect fees from applicants and licensees on behalf of the Commissioner. The Act provides that the Commissioner is authorized to use NMLS to collect and maintain records and process fees related to the licensing of debt collectors.<sup>9</sup> NMLS is the electronic system of recordkeeping used by state regulators nationwide to license non-depository financial services providers, including debt collectors. The Commissioner has determined that using NMLS to submit applications and other filings electronically, instead of by paper, is convenient for applicants, licensees and the Department, and the most efficient and effective way to license debt collectors. Subsection (a) is necessary to inform applicants and licensees that the Commissioner will require license applications to be filed and maintained and fees to be paid through NMLS.

Subsection (b) specifies that all documents and information must be filed through NMLS, including applications, amendments, and surety bonds. The Act provides that the Commissioner may require applications to be made through NMLS and may require an applicant for a license to make some or all of the filings with the Commissioner through NMLS.<sup>10</sup> The Commissioner will require all filings to be made through NMLS unless indicated otherwise. Subsection (b) is necessary to inform applicants that they must file license applications and all other information electronically through NMLS.

Subsection (b)(1) provides how an applicant, authorized officer or other delegate of the applicant must sign any filing made through NMLS requiring a signature and clarifies that filings electronically signed constitute irrefutable evidence of legal signature. Subsection (b)(1) is necessary to notify applicants how to electronically sign their filings in the NMLS digital environment.

Subsection (b)(2) provides that filings are not considered filed with the Commissioner until the Commissioner receives all fees, and the filing is transmitted from NMLS to the Commissioner. The Act provides the Commissioner may issue a license when the application is complete and the applicant has satisfied the requirements.<sup>11</sup> Subsection (b)(2) is necessary to prevent any misunderstandings with applicants concerning when the application has been filed.

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<sup>9</sup>Fin. Code, § 100015, subd. (a).

<sup>10</sup>Fin. Code, § 100006.3.

<sup>11</sup>Fin. Code, § 100011, subd. (a).

Subsection (b)(3) requires applicants to authorize NMLS to obtain credit reports. The Act authorizes the Commissioner to investigate applicants for purposes of determining whether the applicant is eligible for a license and to receive and use any records in making this determination, including credit reports.<sup>12</sup> Subsection (b)(3) is necessary to inform applicants that the Commissioner will use information in the credit reports to investigate them and that they are required to authorize NMLS to obtain credit reports.

Subsection (b)(4) provides that any documents that cannot be filed through NMLS must be filed directly with the Commissioner. NMLS is an uniform electronic recordkeeping system used by regulators nationwide and therefore the filing protocols are not specific to California regulatory requirements. NMLS may not have the capability to accept and transmit to the Commissioner some types of documents or information. Subsection (b)(4) is necessary to require applicants and licensees to file documents with the Commissioner if the documents cannot be filed through NMLS.

#### Section 1850.7. License Application for Debt Collector.

The Department proposes to adopt in Section 1850.7 the application form and other requirements to apply for a license as a debt collector. Subsection (a) requires the license application to be filed on Form MU1 in accordance with the instructions of NMLS and specifies the application includes all exhibits and supporting documents related to the application and any amendments to the information. Subsection (a) also clarifies that affiliates seeking to be licensed under a single license must each file a Form MU1 and the application fee for the application filings is a single \$350 fee. While the Act permits affiliates to be under a single license,<sup>13</sup> it does not exempt them from being investigated by the Department. Upon filing all required documents, payment of fees, and the Department's finding that the applicant(s) is eligible for a license, the license will be issued in the name of the applicant or, in the case of affiliates, the names of all the applicants. The proposed rule is necessary to inform applicants how to apply for a debt collector license, and clarify that an application includes all NMLS forms, exhibits and supporting documentation, and the licensing and investigation requirements apply to each affiliate on the license. The proposed rule also clarifies that an affiliate may hold only one debt collector license. This provision is intended to prevent affiliates from holding more than one debt collector license with different affiliates to circumvent the Department's efforts to revoke the affiliate's license. The requirement is necessary to prevent affiliates whose license has been revoked from continuing to do business under another debt collector license and to maintain the Department's ability to enforce the law by revoking licenses.

The Department consulted with NMLS in deciding that requiring each affiliate to file a Form MU1 is the most feasible option within the existing structure of NMLS to achieve the statutory objectives of enabling affiliates to be licensed under a single license and the Commissioner to investigate all persons engaging in the business of debt collection.<sup>14</sup>

Subsections (a)(1) through (a)(18) set forth the filing requirements, including exhibits and other supporting documents, specific to obtaining a California debt collector license. These

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<sup>12</sup>Fin. Code, § 100004, subd. (a).

<sup>13</sup>Fin. Code, § 100003, subd. (b)(2).

<sup>14</sup>Meeting with NMLS representatives, Courtney Hill and Christen Walker, and Department staff, Steven Turteltaub, Mary Ann Smith and Peggy Fairman, on December 8, 2020.

subsections require the applicant to file Forms MU1, MU2, and MU3 as applicable.

Form MU1 is the uniform filing form used by state regulators to license various financial services industries, including lenders and debt collectors, and provides information on the company (or sole proprietor) applying for a license. The information requested from the applicant in Form MU1 is necessary for the Department to determine whether an applicant meets the requirements for licensure under the Act. Section 1 of the form requires the applicant to identify the specific business activities in which it wishes to engage and be licensed. This information is necessary to identify the type of license that the applicant is seeking because Form MU1 is used for other laws in addition to debt collection. Sections 2 through 13 of the form request basic information about the applicant, including identifying information, primary company contacts, company legal status/structure, trade names, web addresses, books and records custodian information, and information regarding subsidiaries and affiliates. This information is necessary to assist the Department in the investigation of the applicant required under Financial Code section 100004 and to provide the Department with basic information about the entity seeking licensure. Applicants are not required to complete Section 10, Bank Account Information, because the information is not necessary for the Department's investigation of an applicant. Section 14 requires the applicant to list the criminal, civil, regulatory, and financial history of the applicant and any affiliates controlling or controlled by the applicant. This information is necessary for the Department to investigate the applicant under Financial Code section 100009 and to determine whether a reason exists to deny the application under Financial Code section 100012. Sections 15 and 16 require the applicant to list information identifying direct and indirect owners, and executive officers. This information is necessary for the Department to investigate the applicant under section 100009. Applicants are not required to complete Section 17 because qualifying individual information is not applicable to the debt collection industry. The execution section requires an officer or control person to represent that the information is current, true and complete. The attestation is necessary to ensure the Department can hold the applicant accountable for the information the applicant provides in the form.

Form MU2 is the uniform filing form used to provide information on individuals and key personnel associated with the company. Sections 1, 2 and 7 of Form MU2 requests individual identifying information including fingerprints. Section 3 requests residential history. Section 4 requests employment history. Section 5 requests other business activity. Section 6 requires disclosure of information regarding past bankruptcies, foreclosure actions, bonding, unsatisfied judgments or liens, child support delinquency, felonies and specified misdemeanors, financial services-related civil actions, regulatory actions, and terminations. Section 8 requires a credit check. The information in these sections is necessary for the Department to investigate the background of the principals, owners, and key personnel of the applicant as provided in Financial Code section 100009, to determine whether licensure may be granted. Section 9 requires a representation that the applicant reviewed and approved the individual's information on Form MU2. This information is necessary to ensure that the applicant is aware of any disqualifying information related to principals, owners and key personnel. Section 10 requires an acknowledgement and consent by the individual who is the subject of Form MU2. This provision is necessary to ensure the information is true and complete.

Form MU3 is the uniform filing form used to provide information on the company's branch offices. NMLS specifies the information that must be provided by every applicant. Section 1 requires the applicant to designate the business activities to be conducted at the location. Section 2 requests identifying information for the branch location. Section 3 requests other trade names to be used at the location. Section 4 requests the identity of the branch manager, who must also complete Form MU2. Section 5 requests website addresses. Section 6 requests books and records information. Section 7 requests information on the relationship between the branch office and the main office, the authority of the branch office, and whether anyone is responsible for the expenses or has a financial ownership/liability interest in the branch office. Section 8 requests contact information about any party responsible for expenses or with a financial ownership/liability in the branch office, requests information on whether such party is separately licensed, and requests an explanation regarding the party's responsibility. The execution section requires an officer or control person to represent that the information is current, true and complete. The information in the form is necessary to obtain information regarding the branch office for the oversight of the licensee and to determine whether the activities of the branch are permissible for registration, and that the information in the Form MU3 is true and complete.

Some information on the Forms MU1, MU2 and MU3 such as website information is discretionary depending on state-specific requirements. Subsections (a)(1) through (a)(18) are necessary to assist applicants in filing an application through NMLS by identifying and clarifying the filing requirements specific to California.

Subsections (a)(1)(A) through (C) identify the information applicants are required to provide on Form MU1 and file through NMLS to use a fictitious business name in California, including providing all fictitious business names used by the applicant and a copy of the filed Fictitious Business Name Statement, and prohibiting applicants from using fictitious business names without the Commissioner's prior authorization. Subsections (a)(1)(A) through (C) are necessary to protect consumers from being misled about a company's identity and to ensure that fictitious business names comply with California requirements.

Subsection (a)(2) requires applicants to provide an agent for service of process on Form MU1, which is required by NMLS, and to file a separate Appointment of Commissioner as Agent for Service of Process form directly with the Commissioner appointing the Commissioner as the applicant's agent to receive service of legal process. Form MU1 requires applicants to provide the name and contact information of their agent for service of process. This provision is necessary to ensure that consumers, businesses and other parties have the ability to serve legal notice of a lawsuit or other documents on an applicant. California law requires the agent for service of process to be located in California.<sup>15</sup> Subsection (a)(2) is necessary to ensure compliance with California law concerning appointment of agent for service of process and to notify applicants of this California-specific licensing requirement to avoid unnecessary delays in issuing licenses. The Appointment of Commissioner form is discussed in Section 1850.8 below.

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<sup>15</sup> Corp. Code, § 1505.  
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Subsection (a)(3) requires applicants to provide their website information (i.e., the full web address(es) for the applicant and any separate websites for fictitious business names and indicate whether the applicant transacts business through the website(s)) on Form MU1 and subsection (a)(4) requires them to provide the names of the contact employees for consumer complaints from the public and legal matters. Subsection (a)(3) is necessary to provide the Department with complete information to investigate complaints about the licensee and subsection (a)(4) is necessary to identify the individuals the Department should contact for consumer complaints and legal matters concerning the applicant. Subsections (a)(3) and (a)(4) are necessary to notify applicants of these California-specific requirements to avoid unnecessary delays in issuing licenses.

Subsection (a)(5) requires applicants to provide through NMLS an organizational chart identifying, by individual or company name:

- Direct owners (total direct ownership percentage must equal 100 percent (100%);
- Indirect owners; and
- Affiliates of the applicant that engage in the business of debt collection or other financial services or settlement services.

The organizational chart must describe the control relationship(s) with the affiliates and control entities, including the percentage of ownership or interest, and identify the names and NMLS entity ID numbers of the affiliates seeking to be licensed together under a single license and the affiliate that is the primary licensee for purposes of examination. The Act permits affiliated companies to be licensed under a single license.<sup>16</sup> The information required in subsection (a)(5) is necessary to enable the Commissioner to understand the organizational structure of the applicant and to investigate the applicant's affiliates to determine whether they are eligible for licensure and that they are in fact affiliated for purposes of licensing them under the same license. Identifying the names of the affiliates and their NMLS entity ID numbers in the organizational chart and in Item Number 12 of Form MU1 is necessary to ensure licenses are correctly issued in the name of all applicants when more than one applicant will be listed on the license. The NMLS entity ID number is unique to each applicant and requiring the information is necessary for the Department to confirm the applicant's identity, particularly for applicants with similar names, and to enable co-applicant affiliates to complete their Form MU1. The proposed rule is necessary to facilitate the Act's intent to allow affiliated companies to be licensed under one license and avoid inadvertently issuing a separate license to each affiliate. The Act requires the Commissioner to examine licensees and provides that affiliates of a licensee are subject to examination only when reports from the licensee or the licensee's examination provides documented evidence of unlawful activity between the licensee and affiliate arising from debt collection activities.<sup>17</sup> Requiring applicants to designate one affiliate as the primary licensee is necessary to facilitate the Department's examinations by identifying the affiliate that will be subject to periodic examinations.

Subsection (a)(6)(A) requires applicants to provide information on the individuals the applicant named on Form MU1 as directly or indirectly controlling the applicant and to file a Form MU2 for each individual. NMLS requires applicants to file a Form MU2 for each

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<sup>16</sup>Fin. Code, § 100003, subd. (b)(2).

<sup>17</sup>Fin. Code, § 100023, subd. (d).

individual identified on Form MU1. Specifically, applicants must provide identifying information, including government issued identification number and the issuing state, and passport number and the passport issuing country; names used; personal history; employment and other business history; and experience of the following individuals through NMLS on Form MU1 in the “Direct Owners and Executive Officers” and the “Indirect Owners” section, as applicable, and on Form MU2:

- Applicant (if an individual);
- Principal officers;
- Directors;
- Managing members (if the applicant is a limited liability company);
- General partners (if the applicant is a partnership);
- Trustees (if the applicant is a trust);
- Individuals owning or controlling, directly or indirectly, ten percent (10%) or more of the applicant; and
- Individuals responsible for the conduct of the applicant’s debt collection activities in this state.

Subsection (a)(6)(B) requires the individuals to submit fingerprints, subsection (a)(6)(C) require applicants to provide an investigative background report on individuals residing outside the United States and subsection (a)(6)(D) requires applicants to pay all related fees. The Act authorizes the Commissioner to require information the Commissioner deems necessary to investigate the honesty, truthfulness, integrity and competency of the applicant’s officers, directors and other key personnel<sup>18</sup> and to investigate the applicant and specified individuals associated with the applicant.<sup>19</sup> Subsections (a)(6)(A) through (D) are necessary to provide the information the Commissioner needs to investigate individuals associated with an applicant for purposes of determining whether the applicant is eligible for licensure and ensure that applicants, not the Department, bear the costs of background checks.

Subsection (a)(7) clarifies that fingerprints, and subsection (a)(8) provides that authorization for a credit report, are required for all individuals for whom a Form MU2 is filed. The Act requires the Commissioner to obtain fingerprints to investigate the criminal history of applicants and individuals associated with applicants<sup>20</sup> and authorizes the Commissioner to obtain credit reports for purposes of determining whether an applicant is eligible for a license.<sup>21</sup> Fingerprints will be used to provide information on an individual’s criminal history and credit reports are needed to provide information on the individual’s financial responsibility. Subsections (a)(7) and (a)(8) are necessary to ensure the Department receives complete information to investigate individuals associated with the applicant.

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<sup>18</sup>Fin. Code, § 100003, subd. (b)(8).

<sup>19</sup>Fin. Code, § 100009.

<sup>20</sup>Fin. Code, § 100008.

<sup>21</sup>Fin. Code, § 100004, subd.(a).

Subsection (a)(9) requires applicants to provide a management chart identifying by individual name and title, the applicant's:

- Directors;
- Principal officers;
- Any manager or other individual responsible for the conduct of the applicant's debt collection activities in California;
- General and managing partners;
- Managing members; and
- Trustees.

The management chart must also identify the compliance reporting and internal audit structure. Subsection (a)(9) is necessary to enable the Department to understand the applicant's management structure.

Subsection (a)(10) requires applicants to file additional information on the applicant's proposed business activities. Subsections (a)(10)(A) through (E) require applicants to provide specific information on their proposed business operations, including whether the applicant will offer or require consumers to accept or purchase other products or services or use third parties to perform debt collection functions. Requiring applicants to disclose the identity and contact information of third parties is necessary to support the Department's efforts to detect and stop unlicensed activity and enforce the law by ensuring all persons engaged in debt collection are licensed. Subsections (a)(10)(A) through (E) are necessary to provide information to enable the Department to understand how applicants intend to do business in California and whether additional consumer protections may be needed.

Subsections (a)(11)(A), (B), (E) and (F) require applicants that are businesses (not sole proprietors) to file documentation indicating they are qualified or registered to transact business in California or another state. The proposed rules require the documents to be executed not more than 60 calendar days before filing the application to ensure the information is current. The 60-day requirement provides consistency with the licensing requirements for licensees under other laws the Department administers. The proposed rules in this subsection are necessary to ensure that applicants are authorized to do business in the state. Subsections (a)(11)(C) and (D) require partnerships and limited liability companies to file their organizational agreements. This information is necessary to enable the Department to confirm that the applicants are in fact partnerships or limited liability companies for purposes of licensing them and to obtain information to better understand the organization of their business.

Subsection (a)(12) requires applicants to file a surety bond through NMLS and subsection (a)(13) requires applicants to file a copy of their policies and procedures demonstrating how they will comply with the Act. The Act requires applicants to provide a surety bond<sup>22</sup> and to develop policies and procedures,<sup>23</sup> and authorizes the Commissioner to require surety bonds to be filed through NMLS.<sup>24</sup> Subsection (a)(12) is necessary to inform applicants how to file surety bonds with NMLS. Subsection (a)(13) is necessary to ensure

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<sup>22</sup>Fin. Code, § 100019, subd. (e).

<sup>23</sup>Fin. Code, § 100019, subd. (a).

<sup>24</sup>Fin. Code, § 100019, subd. (e).

that applicants have policies and procedures in place to help ensure their compliance with the Act. The requirements for surety bonds are provided in Section 1850.50 of the rules.

Subsection (a)(14) requires applicants to provide through NMLS a sample of the initial letter required under federal law pursuant to Section 1692g of Title 15 of the United States Code that the applicant will use in correspondence with California consumers, which is required by the Act,<sup>25</sup> and a sample of the notice required under California law pursuant to Section 1788.52, subdivision (d), of the California Civil Code that the applicant will use in correspondence with California consumers.<sup>26</sup> Subsection (a)(14) is necessary to enable the Commissioner to ensure that the applicant's proposed activities comply with state and federal debt collection laws.

Subsection (a)(15) requires applicants to file directly with the Commissioner information on debt collection activities as of the prior calendar year-end by emailing the following information to the Debt Collection Licensing Program at [DebtCollectionLicensing@dfpi.ca.gov](mailto:DebtCollectionLicensing@dfpi.ca.gov) :

- The total dollar amount of debt collected from consumers. The Act authorizes the Commissioner to require a higher surety bond amount based on the dollar amount of consumer debt collected.<sup>27</sup> The information in subsection (a)(15) is necessary to provide the Department with information to prospectively determine whether a higher surety bond amount is needed based on a licensee's volume of activity.
- The total dollar amount of net proceeds generated by California debtor accounts (i.e., accounts that are owned by consumers who reside in California at the time the consumer made a payment on the account). The information is necessary to enable the Department to calculate the assessment for the year of licensing pursuant to California Financial Code section 100020, subdivision (a).

The Department will require this information to be filed only at the time of filing an application. The information will be collected thereafter in the licensee's annual report pursuant to California Financial Code section 100021, subdivision (a).

Subsection (a)(16) require applicants to register all branch offices by filing a Form MU3 for each branch office. Subsections (a)(16)(A) and (B) require applicants to file a copy of the filed Fictitious Business Name Statement and prohibit them from using fictitious business names without the Commissioner's prior authorization. Subsections (a)(16)(A) and (B) are necessary to strengthen the Commissioner's oversight of the industry by obtaining information on all locations where debt collection activities are conducted, prevent consumers from being misled about the identity of a debt collector and ensure that fictitious business names comply with California requirements. Subsection (a)(16)(C) requires applicants to file a Form MU2 for each branch manager and subsection (a)(16)(D) requires them to provide website information for each branch office on Form MU3. Subsection (a)(16)(E) provides that the Commissioner may require other information

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<sup>25</sup>Fin. Code, § 100007, subd. (c).

<sup>26</sup>Civ. Code, § 1788.52, subd. (d).

<sup>27</sup>Fin. Code, § 100019, subd.(e)(2).

concerning the branch office that cannot be filed through NMLS to be filed directly with the Commissioner such as correspondence with the applicant concerning branch managers. Subsections (a)(16)(C) and (E) are necessary to provide the Department complete information on the applicant's business activities at branch offices to ensure oversight of the industry. Subsection (a)(16)(D) is necessary because web address(es) for branch offices and fictitious business name provide the Department with complete information to investigate complaints about the licensee.

Subsection (a)(17) informs applicants that they are not required to provide their bank account information in Section 10 of Form MU1 or information on a qualifying individual in Section 17 of Form MU1. The Department does not review bank account information in its investigation of applicants and qualifying individual information is not applicable to the debt collection industry. Subsection (a)(17) is necessary to avoid having applicants file unnecessary information with the Department.

Subsection (a)(18) specifies who may attest to the filing of an application through NMLS and provides that the attestation constitutes an agreement to comply with the Act. Subsection (a)(18) is necessary to ensure the application is filed by an individual with the authority to do so on behalf of the applicant and that the applicant can be held accountable.

Subsection (b) clarifies that an application fee of \$350 and an investigation fee of \$150 per applicant are nonrefundable and must be paid to the Commissioner through NMLS, and NMLS-related fees must be paid by applicants and licensees directly to NMLS through NMLS. The application fee of \$350 per application is based on the average examiner and administrative support staff costs for nine hours to review an application. The Department administers several other licensing laws, including the California Financing Law and the California Deferred Deposit Transaction Law. These laws also require the Commissioner to investigate applicants to determine whether they are eligible for licensure. The investigation fee of \$150 per applicant is based on the average examiner and administrative support staff costs to investigate an applicant under these similar licensing laws. The Act authorizes the Commissioner to charge an investigation fee to cover any costs to investigate the applicant and its key personnel.<sup>28</sup> The key personnel include general partners, principal officers, directors, trustees, managing members, owners, and individuals responsible for the applicant's debt collection activities at the applicant's locations and in this state. Each affiliate is an applicant for purposes of licensure under the Act. Charging the investigation fee to each applicant is necessary to enable the Department to recover the costs to investigate the key personnel of each affiliate. The Act authorizes the Commissioner to use NMLS to license debt collectors and to process transaction fees or other fees related to licensees. NMLS charges fees for processing and maintaining license information including annual renewal fees and fees for obtaining credit reports. Subsection (b) is necessary to inform applicants of the fee amounts charged by the Department and NMLS and how to pay for the fees, and to ensure that applicants are aware that the fees are not refundable and they and not the Department are responsible for paying the NMLS fees to NMLS.

Subsection (c) clarifies when an application is deemed complete and approved by the

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<sup>28</sup>Fin. Code, §§ 100007, subd. (b), and 100009.

Commissioner and when the Commissioner may consider an application abandoned by an applicant. Subsection (c) also clarifies that “60 days” in Section 100013, subdivision (b), of the Financial Code means 60 calendar days. The Act allows applicants who file before January 1, 2022, to engage in business while their application with the Commissioner is pending.<sup>29</sup> Subsection (c) is necessary to clarify that for applicants who file after January 1, 2022, the license must be issued before the applicant may engage in business and to provide the Commissioner’s process for issuing licenses to applicants.

Subsection (d) requires applicants to file an amendment through NMLS for any change to the information provided in the license application and if the license has not yet been issued, to file the new information within 10 calendar days of the change. Subsection (d) is necessary to ensure the information on file with the Department is accurate and to provide the Department adequate time to review the amended information before issuing the license.

Section 1850.8. Appointment of Commissioner of Financial Protection and Innovation as Agent for Service of Process.

The Department proposes to adopt Section 1850.8 to require applicants to appoint the Commissioner as their agent for service of process to receive legal service of noncriminal judicial and administrative proceedings against the applicant. Subsection (a) requires applicants to appoint the Commissioner by completing the Appointment of Commissioner as Agent for Service of Process form. Subsection (b) requires the form to be signed by an individual authorized by the applicant, and subsection (c) requires applicants to file the completed and signed form directly with the Commissioner by emailing the form to the Debt Collection Licensing Program at [DebtCollectionLicensing@dfpi.ca.gov](mailto:DebtCollectionLicensing@dfpi.ca.gov). Subsections (a), (b) and (c) are necessary to ensure that service of process can be accomplished and the appointment is made by an individual with authority to do so on behalf of the applicant, prevent licensees from avoiding service of process by requiring them to appoint the Commissioner as their agent for service of process, and clarify that the form is required as part of the application and must be filed directly with the Commissioner and not through NMLS. Requiring applicants to sign, date and provide the signer’s title on the form, and the signer to be authorized to sign, is necessary to identify the individual who is appointing the Commissioner on behalf of the applicant and to ensure the appointment will be binding on the applicant. The form cannot be filed through NMLS because of NMLS document limitations and therefore it is necessary for applicants to file the form directly with the Department.

Subsection (d) clarifies that service on the Commissioner may be made by leaving a copy of the process at any office of the Commissioner and provides the requirements for that service to be effective. Specifically, subsection (d)(1) requires the party making the service to send notice of service and a copy of the process by registered or certified mail to the party served at its last address on file with the Commissioner and subsection (d)(2) requires the party to file an affidavit of compliance with this subsection, which is necessary to ensure compliance with the service of process requirements. The requirements in subsections (d)(1) and (d)(2) are necessary to facilitate due process by ensuring licensees receive sufficient notice of legal action and that parties comply with

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<sup>29</sup>Fin. Code, § 100000, subd. (c).

service requirements by requiring them to file an affidavit of compliance. Subsection (d) is necessary to enable parties to serve the Commissioner by clarifying where service may be made and the conditions for effective service.

#### Section 1850.9. Fingerprints and Background Checks.

The Department proposes to adopt Section 1850.9 to specify the process applicants must follow to provide statutorily mandated fingerprinting for specified individuals associated with the applicant. The Act requires the Commissioner to investigate the applicant and the applicant's general partners, principal officers, directors, trustees, managing members, individuals owning or controlling 10 percent or more of the applicant and any individual responsible for the conduct of the applicant's debt collection activities at the location or in this state; and requires applicants to submit fingerprints of the individuals to the California Department of Justice for purposes of determining criminal history or arrests.<sup>30</sup> The California Department of Justice processes fingerprint through its Live Scan Service. Live Scan is a system for electronically submitting fingerprints and receiving an automated background check and response.

While the Act provides the Commissioner may require fingerprints to be submitted by applicants and licensees through NMLS<sup>31</sup> and authorizes the Commissioner to waive or modify, in whole or in part, by regulation, any or all of the requirements of the Act and to establish new requirements as reasonably necessary to participate in NMLS,<sup>32</sup> other California laws mandate fingerprint-based criminal history information checks to be conducted by the California Department of Justice.<sup>33</sup>

Subsection (a) requires individuals who are required to be fingerprinted to submit fingerprints through the California Department of Justice's Live Scan Service and directs individuals to the California Attorney General's website for information for submitting fingerprints. The fingerprinting process, logistics and terms can be confusing to the public and particularly to individuals who do not reside in California. Subsection (a) is necessary to clarify who must submit fingerprints and how to provide fingerprints and pay for processing them, which will help ensure compliance with the fingerprinting requirements. Subsection (b) requires the applicant to file with NMLS a copy of the fingerprint request form made to the California Department of Justice for each individual required to be fingerprinted as proof of completing the fingerprinting requirement. This requirement is necessary to facilitate compliance and avoid delays in the Department's investigations by ensuring that fingerprinting of all individuals is in process.

The procedures for fingerprinting individuals who reside outside of California is different because the California Department of Justice's Live Scan Service is unable to electronically process these fingerprints. Subsection (c) requires individuals who cannot be fingerprinted in California to follow the Department of Justice's alternative procedures for fingerprinting. Subsection (c) is necessary to ensure the Department receives fingerprints from all individuals to complete the criminal background investigations.

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<sup>30</sup>Fin. Code, § 100008.

<sup>31</sup>Fin. Code, § 100006.3, subd. (b).

<sup>32</sup>Fin. Code, § 100015, subd. (b).

<sup>33</sup>Pen. Code, § 11105, subd. (u).

Subsection (d) informs applicants that the Department will not issue a license until it receives criminal history information from the California Department of Justice on all individuals required to be fingerprinted. The Act authorizes the Commissioner to deny a license for a criminal conviction involving the applicant's key personnel.<sup>34</sup> Subsection (d) is necessary to notify applicants that a license application may be denied because of the past conduct of key personnel associated with the applicant.

Section 1850.10. Information Regarding Individuals Who Are Not Residents of the United States.

The Department proposes to adopt in Section 1850.10 the applicant's requirements to investigate individuals who reside outside the United States. Subsection (a)(1) through (a)(5) requires applicants to use a search firm to investigate individuals who live outside the United States, or who have not resided in the United States for at least 10 years; to file an investigative background report written in the English language to the Commissioner through NMLS; to require the search firm to demonstrate it is licensed, has sufficient resources to perform the work and is not affiliated with the applicant or individual who is the subject of the search; and to clarify that the investigative background report is required in addition to fingerprinting of the individual and the cost of the investigation must be paid by the applicant or individual. The investigative report is necessary because state and federal criminal history information available to the Department relates to domestic activity and not activity outside the United States. Requiring the search firm to be licensed, have sufficient resources to conduct the investigation and not be affiliated with the applicant or individual is necessary to help ensure the search firm is competent, independent and unbiased, and the report contains the information required and is complete. The proposed rule requires the report to be written in English to enable Department staff to review the report in deciding whether to approve or deny the application.

The Act provides that the Commissioner must investigate applicants and specified individuals to determine the applicant's eligibility for licensure.<sup>35</sup> The California Department of Justice's background check provides information only on criminal history in the United States. Investigating individuals who reside outside the United States is difficult and costly for the Commissioner and would require increasing the fees on all applicants to cover the cost. Subsection (a) is necessary to enable the Commissioner to cost-effectively investigate individuals who live outside the U.S. or have not resided in the United States for at least ten years without increasing the fees for all applicants.

Subsection (b) specifies the information that must be included in the investigative report, including credit history and civil and criminal actions involving the individual. Subsection (b) is necessary for the Department to receive comparable information on these individuals to enable the Department to determine whether the applicant is eligible for licensure. The information required in subsection (b)(1) through (7) is essentially the same information the Department obtains and/or uses to review or corroborate the personal and professional information provided by individuals residing in the United States. This is necessary to ensure that the Department's review of applicants outside the United States is as thorough

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<sup>34</sup>Fin. Code, § 100012.

<sup>35</sup>Fin. Code, § 100009.



as its review of applicants in the United States.

Subsection (c) requires the report to specify the scope of the search and the independence of the search firm, and to provide the firm's contact information. Subsection (c) is necessary to enable the Department to determine whether the report can be relied on for investigative purposes and if necessary, to contact the search firm to follow up on the information in the report.

Subsection (d) permits applicants under certain circumstances to submit a previous report that was prepared for another licensing agency within 12 months of the filing of the debt collector license application and if the report complies with the requirements of this section and the applicant or individual elects to file it with the Commissioner, requires the applicant or individual to file a statement with the report indicating that there are no material changes to the report, specifies the information to include in the statement, including the name of the individual and applicant, and requires the statement to be dated and signed by the individual or applicant. The statement requirements are necessary to help ensure the information the Department receives concerning the individual is accurate and current. Requiring the applicant to obtain permission from the search firm or other licensing agency to use their report and the report to be no older than 12 months is necessary to ensure the information in the report is current and the search firm or licensing agency is aware of how their report is being used. Subsection (d) is necessary to avoid costly duplication of work and applicants incurring costs when unnecessary.

#### Section 1850.11. Notices Included with Applications.

The Department proposes to adopt its information practices and privacy notices in Section 1850.11. The California Information Practices Act of 1977<sup>36</sup> and the Federal Privacy Act of 1974<sup>37</sup> require the Department, when requesting personal information, including social security numbers, to notify the individuals whether disclosure of the social security number is voluntary or mandatory, the statutory authority for requesting social security numbers, and the purpose for which the social security numbers will be used.

The Department's purpose for collecting social security numbers from individuals under the Act is to investigate applicants, obtain prior disciplinary and criminal history, and determine whether entities and individuals are conducting themselves in accordance with applicable law and to determine whether to issue a license to an applicant. Among other things, the notices identify foreseeable disclosures of the information, which include to NMLS, law enforcement and regulatory agencies, and provide information about the Department's information storage location and right to access the information. The information required in subsections (a) through (j) is required by law under the California Information Practices Act of 1977 and the Federal Privacy Act of 1974.

Adopting the notices in the proposed rulemaking is necessary to ensure that all applicants receive the required notices, which may assist them in understanding whether they are required to disclose social security numbers and how the Department will maintain and use their social security number. Subsections (a) through (j) are

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<sup>36</sup> Civ. Code, § 1798.17.

<sup>37</sup> 5 U.S.C. § 552a.

necessary to comply with the California Information Practices Act of 1977 and the Federal Privacy Act of 1974.

#### Section 1850.12. Challenge Process for Information Entered into NMLS.

The Department proposes to adopt in Section 1850.12 the process for applicants and licensees to use to challenge information in NMLS. The Act requires the Commissioner to report violations of the law, enforcement actions and other relevant information to NMLS<sup>38</sup> and to establish a process through which applicants and licensees may challenge the information entered into NMLS by the Commissioner.<sup>39</sup> Subsection (a) requires applicants and licensees to submit a written request to the Department and subsection (b) specifies the information that must be included in the request. Subsection (c) requires the Commissioner to investigate the request. If the Commissioner finds a correction is warranted, subsection (d) requires the Commissioner to request NMLS to correct the incorrect information. If the Commissioner finds a correction is not warranted, subsection (e) requires the Commissioner to deny in writing that the information is incorrect. Subsections (a) through (e) are necessary to provide a clear and fair process for applicants and licensees seeking to address incorrect information in NMLS by providing how and to whom to make the request, specifying the information that must be provided to enable the Department to identify the applicant or licensee in NMLS and the disputed information, and requiring a resolution by requiring the Commissioner to either request NMLS to correct the information or notify the applicant or licensee that the information was not incorrect. Subsections (f) through (h) provide the applicant's and licensee's rights to request an administrative hearing on the matter if the applicant or licensee disagrees with the Department's decision, and if the applicant or licensee prevails, require the Commissioner, within 30 calendar days of the notice of finding that the information is incorrect, to request NMLS to correct the information. Subsections (f) through (h) are necessary to help ensure that applicants and licensees will be treated fairly and in accordance with due process when challenging the Commissioner's reporting of information in NMLS and the information being disclosed to the public is accurate, and to timely address any inaccurate information in the applicant's or licensee's records by requiring applicants and licensees to request a hearing, and the Commissioner after a hearing to request correction of the information, within 30 calendar days.

#### Section 1850.13. Share Arrangements with Other Governmental Agencies.

The Department proposes to adopt Section 1850.13 to inform applicants and licensees that the Commissioner may share the information submitted to NMLS with other regulatory and law enforcement agencies and this sharing shall be accomplished without the loss of any applicable privilege or confidentiality protections. The Act authorizes the Commissioner to use NMLS to request information and to distribute that information to any other government agency or other recipient authorized by law without the loss of confidentiality provided by federal law or California's Information Practices Act.<sup>40</sup> The proposed rule is necessary to provide clarity and transparency to applicants and licensees concerning how their information may be used and the government agencies that may

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<sup>38</sup>Fin. Code, § 100017.

<sup>39</sup>Fin. Code, § 100015, subd. (d).

<sup>40</sup>Fin. Code, §§ 100015 and 100016.

receive the information.

#### Section 1850.14. Evidence of Financial Responsibility.

The Department proposes to adopt Section 1850.14 to clarify the Commissioner's finding of an applicant's (or each applicant in the case of affiliates seeking to be licensed under the same license) financial responsibility concerns any matter, personal or professional, that may impact on the applicant's propensity to operate honestly, fairly and efficiently when engaging in the business of a debt collector. The Act authorizes the Commissioner to deny an application for a license if the Commissioner is unable to find that, among other things, the financial responsibility of the applicant and its general partners, managing members, principal officers, directors, and individuals owning or controlling 10 percent or more of the application support a finding that the business will be operated honestly, fairly, efficiently and in accordance with the requirements of the Act.<sup>41</sup> The Act, however, does not define or clarify what constitutes "financial responsibility". The proposed rule is necessary to clarify that the Commissioner will consider both personal and professional matters of the applicant(s) and specified individuals associated with the applicant in determining whether to issue a license. Debt collection is an occupation that provides licensees access to the financial affairs of ordinary consumers. Considering the personal and professional conduct of applicants and individuals associated with applicants for purposes of licensure is necessary for the Department to ensure their fitness to engage in the debt collection business and prevent individuals who may pose a risk to public safety from entering the business. The proposed rule may impact the applicant's decision to apply for a license or as co-applicants under a single license, or to designate individuals to certain positions that require investigation.

#### Section 1850.15. Denial of License Application.

The Department proposes to adopt in Section 1850.15 the grounds for denying a license. Subsection (a) provides the Commissioner may deny a license for any of the reasons enumerated in Section 100012, subdivision (b)(1) through (b)(7), of the Financial Code. The Act provides the Commissioner may adopt regulations specifying factors the Commissioner will consider in denying a license.<sup>42</sup> Subsection (b) specifies the factors the Commissioner will consider in deciding whether to deny a license to an applicant, which is necessary to provide transparency concerning the acts that may be grounds for denying a license application. The acts identified in subsection (b) relate to prior violations and disciplinary actions that show a history or pattern of misconduct or to qualifications of a debt collector, or may enable or further the violation of professional licensing or other laws, and therefore are necessary for the Commissioner to consider in determining whether to deny a license. Subsection (c) clarifies the Commissioner may deny a license based on the acts or violations committed by any of the applicants applying to be licensed under the same license. Subsection (c) is necessary to facilitate the Act's provision permitting affiliated companies to be licensed under a single license, clarify that a license may be denied because of the bad acts of any co-applicant affiliates, which would result in the denial of the entire license application, and protect consumers by keeping bad actors out of the debt collection industry.

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<sup>41</sup>Fin. Code, § 100012, subd. (b)(7).

<sup>42</sup>Fin. Code, § 100012, subd. (b)(8).

### Section 1850.16. Designated Email Address.

The Department proposes to adopt Section 1850.16 to inform applicants that they must establish a designated email address for purposes of receiving communications and documents, including assessment notices, from the Commissioner. The requirement applies to all licensees under the Department's laws. Financial Code section 331.50 requires licensees to notify the Commissioner prior to changing the email address and provide the new email address, and allows the Commissioner to charge a fine of up to \$50 per day, not to exceed a total of \$1,000, on a licensee that fails to notify the Commissioner before changing its email address or provide the new email address. The proposed rule is necessary to notify applicants of this licensing requirement, which will ensure they receive Department communications and help prevent them from violating the law by failing to provide a designated email address. The proposed rule also clarifies the Department may notify licensees by emailing assessment notices to the licensee's designated email address. The Department's authority to provide the notification by email instead of postal mail was unclear under another law the Department administers. The proposed rule is necessary to clarify any ambiguity concerning the Department's authority to provide assessment notices via email to the designated email address.

### Section 1850.30. Notice of Changes.

The Department proposes to adopt Section 1850.30 to inform licensees how to report changes to the information in the license application. The Act requires licensees to notify the Commissioner in writing of any change to the information provided in the license application not later than 30 days after the occurrence of the event that results in the information becoming inaccurate or incomplete.<sup>43</sup> Subsection (a) informs licensees that they are required to file any changes to the information in the license application and subsection (b) specifies that the changes must be filed through NMLS on Forms MU1, MU2 and MU3, or directly to the Commissioner if the change cannot be filed through NMLS, and any fees must be paid by licensees through NMLS to the Commissioner or to NMLS as applicable. Subsection (c) provides that changes must be filed within 30 calendar days of the change, except for a change in the principal place of business, which must be filed at least 10 days before the change as provided in subsection (d). Subsection (d) requires the notice to the Commissioner of the change in the licensee's principal place of business to include the licensee's name, street address of the new location and date of change, and describe any other existing business being conducted at the new location. Requiring licensees in subsections (a) and (d) to file with the Commissioner subsequent changes to the information in their license application is required by Financial Code section 100018 and necessary to ensure the Department's information concerning the licensee remains current.

Subsection (b) is necessary to provide licensees the process for filing changed information with the Commissioner. Subsection (c) is necessary to clarify that "30 days" in Section 100018, subdivision (a), of the Financial Code means 30 calendar days to avoid any ambiguity concerning when the information must be filed with the Commissioner. Requiring licensees in subsection (d) to provide the specified information in the notice to the Commissioner is necessary to ensure oversight of activities at licensed locations. The

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<sup>43</sup>Fin. Code, § 100018, subd. (a).

Commissioner generally does not have concerns with licensees relocating their principal place of business to another location. However, there may be regulatory issues if, for example, other business is already ongoing at the new location and that business is not compatible with conducting debt collection business at the same location. Applicants for a debt collector license and for other Department licenses are required in their license application to disclose other business activities at their location and the Commissioner evaluates the compatibility of the other business activities in deciding whether to approve or deny a license. Subsection (d) is intended to provide consistency in the licensing requirements for licensees under the Department's oversight.

Section 1850.31. Officers, Directors, Partners, and Other Persons: Maintenance of Current List with Commissioner: Information Required.

The Department proposes to adopt Section 1850.31 to require licensees to keep the Commissioner informed of the identity of all key personnel. Subsection (a) notifies licensees that they must maintain on file with NMLS a current list of officers, directors, partners, and other persons named in the license application and subsection (b) provides that any change related to these individuals must be provided on Forms MU1, MU2 and MU3 within 30 calendar days of the change, and any fees for filing the changed information must be paid by the licensee through NMLS to the Commissioner or NMLS as applicable. Subsections (a) and (b) are necessary to provide the Department with accurate information on the identity of individuals responsible for the licensee's business operations, which will enable the Department to promptly investigate the individuals and prevent bad actors from entering the debt collection industry in California.

Section 1850.32. New Branch Office Registration or Change in Location of Existing Branch Office.

The Department proposes to adopt Section 1850.32 to describe how to report information on a new branch office or when moving an existing branch office to a new location. Subsection (a) requires licensees to file a Form MU3 for the branch office through NMLS within 30 calendar days of engaging in business at the new branch office or the new location for an existing branch office, and subsections (b) through (d) provide the requirements for using a fictitious business name for a branch office, including obtaining the Department's prior approval and filing a copy of the Fictitious Business Name Statement, with the "filed" stamp from the county clerk's office through NMLS. Subsections (a) through (d) are necessary to provide the Department with complete information on all locations where debt collection activity is being conducted.

Subsection (e) requires licensees to identify the branch manager on Form MU3, file a Form MU2 for the branch manager and provide authorization for a credit report for the branch manager, and subsection (f) requires licensees to provide on the Form MU3 the website of the branch office, including the full web address for the new branch office and any separate website(s) for fictitious business names and whether the licensee transacts business through the website(s). The Act requires the Commissioner to investigate the individual responsible for the licensee's debt collection activities at the

location.<sup>44</sup> Credit reports provide information on the individual's financial responsibility. The information is necessary for the Department to assess the individual's fitness as a branch manager of debt collection activities. Subsections (e) and (f) are necessary to ensure the Department has complete information on the debt collection operations being conducted at the location, including the individual responsible for those activities.

Subsection (g) requires licensees to pay fingerprinting fees, and other fees, if any, to the Commissioner and any NMLS fees to NMLS through NMLS. The Act authorizes the Department to use NMLS to license debt collectors and to process transaction fees or other fees related to licensees. NMLS charges fees for processing and maintaining license information including fees for obtaining credit reports. Subsection (h) notifies licensees that they may be required to file directly with the Commissioner other information on the branch office that cannot be filed through NMLS such as correspondence concerning the branch manager. Subsections (g) and (h) are necessary to enable the Department to quickly obtain and review other relevant information concerning branch offices, as necessary, and ensure that applicants, not the Department, bear the costs of background checks.

Subsections (i) and (j) provide the process and timeframes for approving or denying branch managers at new locations. Subsection (i) requires the Commissioner to approve or disapprove a branch manager and inform the licensee of the decision within 90 calendar days of being notified of the new branch office. Subsection (j) requires the licensee to designate a different individual as branch manager within 10 calendar days of the Commissioner's denial. Subsection (k) clarifies that a change in a licensee's principal place of business is not a new location and therefore is not subject to the requirements in subsections (i) and (j). Subsections (i) through (k) are necessary to clarify the Commissioner may deny appointment of a licensee's branch manager and to provide the process and timeframes for licensees to designate a different individual.

#### Section 1850.50 Surety Bond.

The Department proposes to adopt Section 1850.50 to provide the requirements for submitting and maintaining a surety bond with the Commissioner. Subsection (a) requires applicants and licensees to use NMLS to file surety bonds and related information with the Commissioner and subsection (b) specifies the NMLS electronic surety bond form that must be used to file the surety bond and information. The Act provides that the Commissioner may require licensees to submit bonds, riders and endorsements electronically through NMLS' electronic surety bond function.<sup>45</sup> Subsections (a) and (b) are necessary to inform applicants and licensees that they must use NMLS to file surety bond information and how to file that information. The NMLS electronic surety bond form specifies the requirements for a surety bond under the Act. The bond form requires the bond number, bond amount and bond effective date; describes the parties to the bond and specifies the insurer must be authorized to do business in California; provides the bond is issued in connection with a debt collector license and payable to the Commissioner and remains in effect with the license or until cancellation; authorizes the Commissioner to enforce the bond against the licensee or surety; requires joint and several liability of the surety and successors; and must be signed by licensee and surety. These requirements

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<sup>44</sup> Fin. Code, § 100009, subd. (b).

<sup>45</sup> Fin. Code, § 100019, subd. (e).

are necessary to identify the licensee's bond and ensure bonds comply with the surety bond requirements in the Act and the Bond and Undertaking Law, particularly Section 995.320, subdivision (a)(2), of the Code of Civil Procedure. The bond form also requires a surety to provide a 60-calendar-day advance notice of cancellation to the Commissioner and 10-calendar-day notice of any action against the bond, which is necessary to provide the Commissioner reasonable time to ensure the licensee replaces the bond on or before the cancellation date or to monitor the claim and ensure the licensee restores the bond to the legally required amount.

Subsection (c) requires an applicant to initially submit a surety bond of at least \$25,000. Subsection (d) provides that the Commissioner may require a higher bond amount for a licensee based on the total dollar amount of consumer debt collected by the licensee and requires licensees, upon notification of the higher amount, to file a new surety bond for the higher amount. Subsections (c) and (d) are necessary to enable applicants to apply for a license and provide for surety bonds to be in place before January 1, 2022.

The Act permits the Commissioner to require a higher surety bond based on the total dollar amount of debt collected by the licensee. The Department, however, does not at this time have sufficient information on the volume of consumer debt being collected to determine the amounts sufficient for surety bonds. The Department intends to collect from each applicant the total dollar amount of debt collected in the preceding calendar year from consumers residing in California at the time the consumer made payment on the debt. For purposes of issuing licenses before January 1, 2022, the Department proposes to require each applicant to initially provide a surety bond of at least \$25,000.

The Department considered permitting applicants, in the case of more than one applicant licensed under a single license, to file a single surety bond in the aggregate amount required for all the applicants on the license. However, this was not feasible under NMLS' electronic surety bond reporting system because it would require additional reporting to the Department outside of NMLS to maintain that information.

Subsection (e) provides the Commissioner may periodically require licensees to file a new surety bond for a higher amount based on changes to the volume of activity. Subsection (e) is necessary to enable licensees to financially plan for maintaining their surety bond.

Subsection (f) requires at least a 60-calendar-day notice to the Commissioner before a bond may be cancelled, in whole or in part, and subsection (g) requires notification to the Commissioner within 10 calendar days of any claim being filed against the bond, or any amount being paid out under the bond pursuant to the Act.<sup>46</sup> Subsections (e) and (f) are necessary to ensure that the Commissioner has adequate notice before a surety bond is cancelled and that appropriate amounts of money are available to pay costs, fines and fees levied by the Commissioner.

#### Section 1850.60. Effectiveness of Debt Collector License.

The Department proposes to adopt Section 1850.60 to clarify that the Commissioner must accept a licensee's surrender of its license before it is effective. The Act provides that a

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<sup>46</sup>Fin. Code, § 100019, subd. (e)(1).

license shall remain effective until the license is either suspended or revoked by the Commissioner or surrendered by the licensee.<sup>47</sup> The Commissioner has regulatory oversight of licensees and the proposed rule is necessary to notify licensees that the Commissioner continues to maintain regulatory oversight of the licensee until the Commissioner approves the surrender.

#### Section 1850.61. Surrender of License as a Debt Collector.

The Department proposes to adopt Section 1850.61 to provide the procedure for surrendering a license. Subsection (a) requires licensees to apply to surrender their license through NMLS by filing Form MU1, MU2 and MU3 as applicable. Subsection (a) is necessary because the Commissioner has designated NMLS to manage all filings related to licenses. Subsection (b) requires licensees to file a plan directly with the Commissioner for the Commissioner's approval and requires the plan to include, among other things, a plan for closing out the debt collector business and the time frame for closing or transferring the business to another company. Subsection (b) is necessary to ensure the orderly closing of the business, protect consumers against the mishandling of collection files and enable the Department to ensure any new debt collection company taking over the business is licensed.

#### NON-DUPLICATION STANDARD [Title 1, California Code of Regulations, Section 12, Subdivision (b)(1)]

The proposed regulations duplicate state statutes which are cited as authority or reference for the proposed regulations. The duplication is necessary to satisfy the clarity standard of Government Code section 11349.1, subdivision (a)(3). Specifically, the rules in Sections 1850, 1850.50 and 1850.60 include language which repeats or rephrases in whole or in part state statutes for the purpose of helping licensees understand the rules or the Department's authority to adopt the rules.

#### BENEFITS ANTICIPATED FROM REGULATORY ACTION [Government Code Section 11346.2, Subdivision (b)(1)]

The benefits anticipated from this regulatory action include the following nonmonetary benefits to consumers: protecting against unlicensed activity by ensuring that those engaged in debt collection are licensed; preventing bad actors from entering the debt collection industry by requiring all individuals responsible for debt collection activities to be screened, investigated and meet standards to engage in the business; eliminating any loopholes in licensure by requiring all persons engaging in debt collection, including their affiliates and affiliated companies, to be subject to the same licensing requirements; facilitating the Department's ability to detect unlicensed operators by, among other things, requiring licensees, when closing or transferring their business to another debt collector or moving their business locations or opening new locations, to inform the Commissioner of the identity of the new company or new location; and enabling the Commissioner to take action to hold licensees that harm consumers accountable for their conduct by providing the Commissioner the means to serve legal process on any licensee.

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<sup>47</sup>Fin. Code, §§ 100014 and 100022.



Nonmonetary benefits to licensees are expected to include: enabling debt collectors to engage in business while applying for a license before the Act becomes effective in January 2022; clarifying the process and requirements for applying for a license, including for affiliates and affiliated companies applying for a single license, through NMLS by providing instructions on California-specific application requirements; ensuring that applicants and licensees are treated fairly by providing the process to challenge the Commissioner's reporting of information in NMLS; requiring applicants to investigate and pay for the costs of investigating associated individuals who do not reside in the United States, which helps keep the fees and Department costs to administer the licensing program reasonable for all applicants; providing regulatory certainty when applying for a license to prevent licensees from inadvertently violating the Act; promoting fairness and equity by ensuring all persons engaged in debt collection are licensed and regulated under the Act; and providing the opportunity to participate in adopting balanced regulations.

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

#### POTENTIAL FOR ADVERSE ECONOMIC IMPACT ON BUSINESS AND INDIVIDUALS [Government Code Section 11346.3, Subdivision (a)]

The Commissioner has determined that the proposed regulatory action likely will not have an adverse economic impact or potential for an adverse economic impact on individuals or on business, including the ability of California businesses to compete with businesses in other states. The regulatory proposal provides the process for debt collectors to obtain licensure in California. Most states require debt collectors to register or be licensed through NMLS and some cities, such as New York City and Chicago, also license debt collectors. The activities of debt collectors are subject to state regulation under the Rosenthal Fair Debt Collection Practices Act<sup>48</sup> and the Fair Debt Buyers Practices Act.<sup>49</sup> The proposed regulatory action does not restrict or impose substantial new requirements on the activities they are permitted to engage in under these laws.

#### ECONOMIC IMPACT ASSESSMENT [Government Code Section 11346.3, Subdivision (b)]

##### (A) The Creation or Elimination of Jobs Within the State.

The Commissioner has determined this regulatory proposal likely will not have a significant impact on the creation or elimination of jobs in California. The regulatory proposal does not provide economic or other incentives to create jobs. This regulatory proposal is intended to provide the process and requirements to apply for a debt collector license in California. The regulatory proposal likely will not significantly eliminate jobs because it does not prohibit debt collectors from engaging in any lawful activities that they are permitted to engage in.

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<sup>48</sup>Civ. Code, § 1788 et seq.

<sup>49</sup>Civ. Code, § 1788.50 et seq.

(B) The Creation of New Businesses or the Elimination of Existing Businesses Within the State.

The Commissioner has determined this regulatory proposal likely will not have a significant impact on the creation of new businesses or the elimination of existing businesses in California. The Commissioner relied on the legislative committee analyses of Senate Bill 908<sup>50</sup> to support his initial determination that the regulatory action will not have a significant impact on business, or any other impact described in Government Code section 11346.3. The regulatory proposal does not prevent debt collectors from engaging in their business activities.

Other than the reports and information cited above, the Commissioner has not relied on any other reports or facts to support his initial determination that the regulation will not have a significant effect on business.

(C) The Expansion of Businesses Currently Doing Business Within the State.

The Commissioner has determined this regulatory proposal likely will not result in the expansion of businesses currently doing business within the state. The regulatory proposal does not provide economic or other incentives to create jobs or expand business. The persons who are subject to licensure already engage in debt collection activities in California and this regulatory proposal is intended to provide the process for them to be licensed.

(D) The Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety and the State's Environment.

The Commissioner has determined this regulatory proposal may benefit the health and welfare of California consumers by protecting them against unlicensed activity; requiring debt collectors to be screened, investigated and meet standards to engage in the business; and eliminating any loopholes in licensure by requiring all persons engaging in debt collection, including their affiliates, to be subject to the same licensing requirements. The regulatory proposal will not benefit worker safety or California's environment.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS [Government Code Section 11346.2, Subdivision (b)(3)]

The Commissioner relied on the following documents in proposing the adoption of the proposed regulations under the Act:

- NMLS Policy Guide; and
- Legislative committee analyses for Senate Bill 908.

The documents are available and on file with the Department. The Commissioner did not rely on any other technical, theoretical, or empirical study, report, or other similar document in proposing this regulatory action.

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<sup>50</sup>Sen. Bill No. 908 (Chap. 163, Stats. 2020.)

REASONABLE ALTERNATIVES AND REASONS FOR REJECTING THOSE ALTERNATIVES [Government Code Section 11346.2, Subdivision (b)(4)(A)]

No other reasonable alternatives to the regulations have been identified or brought to the Commissioner's attention that would be: more effective in carrying out the purpose for which the action is proposed; as effective and less burdensome to affected private persons; or more cost-effective to affected private persons and equally effective in implementing the Act than the proposed rules described in this Initial Statement of Reasons.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES AND REASONS FOR REJECTING THOSE ALTERNATIVES [Government Code Section 11346.2, Subdivision (b)(4)(B)]

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. The Commissioner is unable at this time to determine the number of debt collectors operating in California that are small businesses as defined in Government Code section 11342.610. There currently is no data on who is collecting consumer debt, the volume of consumer debt being collected or the number of debt collectors operating in this state.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY OR OTHER EVIDENCE RELIED ON BY AGENCY [Government Code Section 11346.2, Subdivision (b)(5)(A)]

The Commissioner relied on the legislative committee analyses of Senate Bill 908 to support the initial determination that the rulemaking action will not have a significant adverse economic impact on business. The Commissioner has not relied on any other facts, evidence, documents, or testimony in reaching that determination.