



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

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

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

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

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

- Sections 1850, 1850.6, 1850.7, 1850.8, 1850.9, 1850.10, 1850.11, 1850.12, 1850.13, 1850.14, 1850.15, 1850.16, 1850.30, 1850.31, 1850.32, 1850.50, 1850.60 and 1850.61.

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

EFFECTIVE DATE OF REGULATIONS

The Commissioner anticipates the final rules, if adopted, will become effective on or about November 19, 2021. The Debt Collection Licensing Act permits debt collectors to apply for a license before January 1, 2022 and engage in business pending the Commissioner’s approval or denial of the application. This proposed rulemaking would adopt the license application and procedures to allow debt collectors to apply for a license before January 1, 2022.

The Commissioner expects to adopt additional regulations in 2022 in a separate rulemaking that would specify, among other things, the requirements for maintaining books and records, and for surety bonds based on a licensee’s volume of debt collection

¹ Fin. Code, § 100002, subd. (j).

² Fin. Code, § 100001, subd. (a).

³ Fin. Code, § 100000.5, subd. (a).

activity.

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

Section 100003, Financial Code.

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

Sections 494.5, 17900, 17910, 17913, 17915, 17916 and 17926, Business and Professions Code; Sections 1633.7, 1788.50, 1788.52, 1798.17 and 1798.24, Civil Code; Section 995.320, Code of Civil Procedure; Section 1505, Corporations Code; Section 17520, Family Code; Sections 331.5, 100001, 100002, 100003, 100004, 100005, 100006, 100006.3, 100007, 100008, 100009, 100011, 100012, 100013, 100014, 100015, 100016, 100018, 100019 and 100022, Financial Code; Sections 11019.9, and 11523, Government Code; Section 11077.1, Penal Code; Section 552(a), Title 5, U.S.C.; Sections 1621, 1641 and 1642, Title 8, U.S.C.; and Section 1692g, Title 15, U.S.C.

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

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

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

Where to Submit Comments

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

Postal Mail

Department of Financial Protection and Innovation
Attn: Sandra Sandoval
300 S. Spring Street, Suite 15513
Los Angeles, California 90013

Electronic Mail

Comments may be submitted electronically to regulations@dfpi.ca.gov. Please identify the comments as PRO 02/20 in the subject line.

Fax

(213) 897-8860

Time for Comments

Comments may be submitted until June 8, 2021. If the final day for the acceptance of comments is a Saturday, Sunday or state holiday, the comment period will close on the next business day.

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

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

The objectives of the proposed regulations are to:

- Provide the process and requirements to apply for a license as a debt collector, including for affiliates or affiliated companies 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;
- Specify the information required to enable the Commissioner to investigate applicants to determine whether they meet the standards for licensure;
- Provide the processes for applicants and licensees 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 existing branch offices or making changes to key personnel; and
- Specify the acts that may constitute grounds for the Commissioner to deny a license.

The Debt Collection Licensing Act was recently enacted by the Legislature to license and regulate debt collectors that collect consumer debt. Prior to enactment of the Debt Collection Licensing Act, debt collectors were not required to be licensed in California. The Debt Collection Licensing Act requires the Department to license, regulate, investigate, and examine persons engaged in collecting consumer debt. The proposed regulations would adopt the requirements to apply for a debt collector license.

The benefits anticipated from this regulatory action include the following nonmonetary benefits to consumers: protection 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.

Nonmonetary benefits to licensees are expected to include: enabling debt collectors to engage in business while applying for a license before the Debt Collection Licensing Act becomes effective in January 2022; clarifying the process and requirements, including for affiliates and affiliated companies applying for a single license, to apply for a 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.

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

The Debt Collection Licensing Act prohibits any person from engaging in the business of collecting consumer debt without first obtaining a license from the Department.⁴ Existing law defines "debt collector" to mean any person who, in the ordinary course of business, regularly, on the person's own behalf or on behalf of others, engages in debt collection, including a debt buyer and any person who composes and sells, or offers to compose and sell, forms, letters and other collection media used or intended to be used for debt collection.⁵

Existing law authorizes the Commissioner to allow affiliated companies to be under a single license,⁶ to prescribe the form of the application and to receive applications for licenses,⁷ and to require applications to be made through NMLS and applicants and licensees to submit fees, fingerprints, supporting documents, changes of address, and

⁴ Fin. Code, § 100001, subd. (a)

⁵ Fin. Code, § 100002, subd. (j).

⁶ Fin. Code, § 100003, subd. (b)(2).

⁷ Fin. Code, § 100003, subd. (b)(6).

any other information, and amendments or modifications to the information in the application, through NMLS.⁸ Existing law requires the application to include the applicant's principal place of business, all branch locations, and an application fee and investigation fee, and be signed under penalty of perjury.⁹ Existing law requires applicants to provide a surety bond in the minimum amount of \$25,000.¹⁰

The proposed rules would require applicants to apply for a debt collector license through NMLS, and to submit information and supporting documents, including a surety bond, and pay fees to the Commissioner through NMLS. The proposed rules would specify the application requirements and information specific to California's licensing scheme and for affiliates and affiliated companies when applying for licensure under a single license.

Existing law requires the Commissioner to investigate applicants and their key personnel to determine whether the applicant is eligible for a license¹¹ and authorizes the Commissioner to obtain fingerprints of key personnel;¹² criminal, civil and administrative history information; and personal history and experience information, including credit reports¹³ for purposes of conducting the investigations. The proposed rules would require applicants to provide the information to the Commissioner through NMLS to enable the Commissioner to conduct the investigations and sets forth the process for providing fingerprints through the California Department of Justice.

Existing law requires the Commissioner to establish a process through which applicants and licensees may challenge information entered into NMLS by the Commissioner and to share information with government agencies.¹⁴ The proposed rules set forth the process for challenging information entered into NMLS and identifies the government agencies the Commissioner may share information with from the NMLS filings.

Existing law authorizes the Commissioner to adopt rules to administer the Debt Collection Licensing Act;¹⁵ to suspend or revoke licenses, after notice and an opportunity for a hearing, for violating the Act;¹⁶ and to deny a license, after notice and an opportunity for a hearing, if the Commissioner determines the requirements have not been satisfied. Existing law specifies the grounds for denying a license, including the applicant's financial responsibility; and authorizes the Commissioner to adopt regulations specifying the factors that the Commissioner will consider in denying a license.¹⁷ The proposed regulations would clarify "financial responsibility", identify factors the Commissioner may consider in denying a license and require applicants to designate the Commissioner to receive legal service on behalf of the applicant.

⁸ Fin. Code, § 100006.3.

⁹ Fin. Code, § 100007.

¹⁰ Fin. Code, § 100019, subd. (e).

¹¹ Fin. Code, § 100003, subd. (b)(8).

¹² Fin. Code, § 100008.

¹³ Fin. Code, § 100004.

¹⁴ Fin. Code, § 100015, subd. (c) and (d).

¹⁵ Fin. Code, § 100003, subd. (a).

¹⁶ Fin. Code, § 100003.3.

¹⁷ Fin. Code, § 100012.

Existing law requires licensees subject to the Department's jurisdiction to establish a designated email address with the Department.¹⁸ The proposed regulations would require licensees under the Debt Collection Licensing Act to establish a designated email address and agree to accept notifications from the Department at this email address.

Existing law requires applicants to provide their principal place of business, all branch locations and key personnel, and requires applicants and licensees to notify the Commissioner of any changes to the information provided in the license application.¹⁹ The proposed regulations would provide the process for notifying the Commissioner of changes to the information in the license application, including the information that must be filed and when it must be filed with the Commissioner.

Existing law requires licensees to maintain a surety bond in the amount of at least \$25,000 and authorizes the Commissioner to require a higher bond amount based on the number of affiliates under the license and the dollar amount received by the licensee from collecting consumer debt.²⁰ The proposed regulations would set forth the process for submitting and maintaining the surety bond.

Existing law provides that a license remains effective until the license is either suspended or revoked by the Commissioner or surrendered by the licensee,²¹ and requires licensees to inform the Commissioner in writing and to surrender the license upon ceasing to engage in debt collection.²² The proposed regulations set forth the process for surrendering a license, including requiring licensees to file a plan with the Commissioner and obtaining the Commissioner's approval before the surrender is effective.

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

Debt collectors are subject to the federal Fair Debt Collection Practices Act.²³ The Fair Debt Collection Practices Act prohibits debt collectors from engaging in abusive or deceptive debt collection practices. The Federal Trade Commission and the federal Consumer Financial Protection Bureau receive and investigate complaints from consumers concerning debt collection. The proposed regulatory action is not inconsistent with existing federal laws.

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

The Commissioner has conducted an evaluation of whether the proposed regulations are consistent with existing state regulations and has concluded that these are the only regulations that license consumer debt collectors. Other state laws such as the Rosenthal Fair Debt Collection Practices Act and the Fair Debt Buying Practices Act regulate the activities of debt collectors. The Debt Collection Licensing Act authorizes the

¹⁸ Fin. Code, § 331.5.

¹⁹ Fin. Code, § 100018.

²⁰ Fin. Code, § 100019, subd. (e).

²¹ Fin. Code, § 100014.

²² Fin. Code, § 100022.

²³ 15 U.S.C. § 1692 et seq.

Commissioner to enforce these laws. This proposed regulatory action is consistent with existing policy considerations of the Rosenthal Fair Debt Collection Practices Act and the Fair Debt Buying Practices Act. The California Attorney General may investigate complaints concerning debt collectors. This proposed rulemaking is neither inconsistent nor incompatible with other existing state regulations.

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

This proposed regulatory action incorporates the following forms by reference: NMLS Company Form, version 11.0, dated 09/12/15; NMLS Individual Form, version 9, dated 9/12/2016, NMLS Branch Form, version 10, dated 03/31/2014; and Surety Bond, Debt Collection Licensing Act Licensee bond, ESB Form Version 1 Effective 07/01/2021, NMLS Version: CA-DBO-07/01/2021.

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

- Mandate on local agencies or school districts: none.
- Cost or savings to any State agency: \$6.2 million in costs to implement the proposed regulations and \$6.2 million in ongoing costs.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: none.
- Other nondiscretionary cost or savings imposed on local agencies: none.
- Cost or savings in federal funding to the state: none.
- Significant effect on housing costs: none.

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

The Commissioner has made an initial determination that the proposed regulatory action is unlikely to have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. In making this initial determination, the Commissioner relied on the legislative committee analyses of Senate Bill 908 (Chap. 163, Stats. 2020) to support this initial determination that the regulatory action will likely not have a significant adverse economic impact on business. The Commissioner has not relied on any other reports, facts, evidence, documents, or testimony to support the initial determination that the regulation is unlikely to have a significant, statewide adverse economic impact on business.

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

Government Code section 11342.610 defines a small business to mean a business activity that is independently owned and operated and not dominant in its field of operation, and its annual gross receipts do not exceed two million dollars. The Commissioner is unable at this time to determine whether any of the persons subject to licensure 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.

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

Applicants for a debt collector license will likely incur initial costs estimated at up to \$1,000 to comply with the proposed licensing requirements. They will be required to pay all costs associated with licensure, including a \$350 application fee, a \$150 investigation fee to investigate the applicant and the applicant's key personnel to determine the applicant's eligibility for licensure, the costs related to statutorily required fingerprinting of key personnel and to obtain credit reports for the individuals, and if any of the key personnel do not reside in the United States, the costs to engage a search firm to investigate the individual, and the costs to obtain a surety bond in the minimum amount of \$25,000. The costs will vary among applicants based on the number of their key personnel who are subject to fingerprinting and investigation and whether any of these individuals reside outside the United States.

Licensees will likely incur annual estimated costs of approximately \$1,000 to comply with the requirements to maintain a license. Specifically, licensees may incur costs from maintaining the surety bond and the time required to notify the Department of changes to the license application, including to open a new branch office or change the location of an existing branch office or key personnel. The costs to maintain a surety bond may include having to periodically provide a new surety bond in a higher amount if the licensee's volume of debt collection activity under the license increases.

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

The Commissioner has determined:

- The proposed action is unlikely to create or eliminate jobs within the state;
- The proposed action is unlikely to create new businesses or eliminate existing businesses within the state;
- The proposed action is unlikely to expand businesses currently doing business within California;
- As discussed above under the Informative Digest, the proposed action may benefit the health and welfare of California residents by 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.

- No benefits or adverse impacts to worker safety or to the state's environment are anticipated from this regulatory action.

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

This proposed rulemaking does not impose any business reporting requirements.

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

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

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

As of the date this Notice is published, the rulemaking file consists of: this Notice, the Initial Statement of Reasons, the Proposed Text of the regulations, and all the information upon which the proposal is based. The Notice, Initial Statement of Reasons and Proposed Text are available by contacting the person designated below:

Department of Financial Protection and
Innovation
Attn: Sandra Sandoval
300 S. Spring Street, Suite 15513
Los Angeles, California 90013
Telephone: (213) 897-3432
E-mail: regulations@dfpi.ca.gov

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

As required by the Administrative Procedure Act, the Department's Legal Division maintains the rulemaking file. The rulemaking file is available for public inspection and

copying throughout the rulemaking process at the Department of Financial Protection and Innovation, Legal Division, 300 S. Spring Street, Suite 15513, Los Angeles, California 90013.

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

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

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

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

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

Inquiries regarding the substance of the proposed regulation may be directed to:

Department of Financial Protection and Innovation
Attn: Senior Counsel Peggy Fairman
2101 Arena Boulevard
Sacramento, California 95834
Telephone: (916) 576-4959
E-mail: Peggy.Fairman@dfpi.ca.gov

Non-substantive inquiries concerning this action, such as requests for copies of the proposed regulation or questions regarding the timelines or rulemaking status, may be directed to:

Department of Financial Protection and Innovation
Attn: Sandra Sandoval
300 S. Spring Street, Suite 15513
Los Angeles, California 90013
Telephone: (213) 897-3432
E-mail: regulations@dfpi.ca.gov

The backup contact person for non-substantive inquiries is:

Department of Financial Protection and Innovation
Attn: Mark Dyer
2101 Arena Boulevard

Sacramento, California 95834
Telephone: (916) 576-3637
E-mail: regulations@dfpi.ca.gov

Dated: April 8, 2021
Sacramento, California