July 12, 2021

Department of Financial Protection and Innovation
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VIA ELECTRONIC TRANSMISSION

**COMMENTS, ANALYSIS, AND RECOMMENDATIONS FROM CONSUMER, SMALL BUSINESS, AND LOW-INCOME GROUPS TO PROPOSED SECOND DRAFT OF DEBT COLLECTION REGULATIONS (SUBCHAPTER 11.3 OF TITLE 10 OF THE CCR, SECTION 1850, *ET SEQ*.) ADDRESSING PROCESS AND GROUNDS FOR GRANTING DEBT COLLECTOR LICENSE APPLICATIONS**

## INTRODUCTION: CHANGES THAT WERE NOT MADE TO THE DRAFT REGULATIONS SHOULD BE MADE TO OFFER THE BARE MINIMUM PROTECTION TO CALIFORNIA'S VULNERABLE CONSUMERS AND SMALL BUSINESSES.

The undersigned representing the low-income families, small business, and consumers who are the intended beneficiaries of debt collection licensure were deeply disappointed that the Department of Financial Protection and Innovation's ("Department") second draft regulations proposed for subchapter 11.3 of Title 10 of the California Code of Regulations, section 1850, *et seq*.[1], did not make changes minimally needed to protect the California public because (i) they fail to require applicants to disclose at-their-fingertips information that would reveal whether the applicant has a persistent history substantiated wrongdoing and (ii) they fail to make simple changes that will ensure required bonds actually are used to protect consumers and are large enough meaningfully to cover the harm

[1] Hereafter, "section" references will be referring to the sections of these proposed regulations.

they suffer. More specifically, the deepest concerns are about these two serious weaknesses:

- ***The draft regulations do not require applicants to self-disclose the information that is most likely to reveal to the Department which applicants should obviously be denied or be subjected to closer scrutiny; namely, information revealing whether a domestic applicant or the persons who control it have an historical record of being sued or disciplined.*** The draft regulations require some of this information for out-of-state applicants; an acknowledgement by the Department of the relevance and usefulness of such. But, the regulations omit even a similar requirement for applicants based in the United States, even though the harm to consumers does not differ based on the national residency of the wrongdoer. Furthermore, requiring self-disclosure of such indisputably relevant background information revealing the law-abiding integrity and business practices of applicants poses no more of a work-load obligation on the Department than not requiring it. To require the information is not the same thing as dictating what must be done with it. With such a requirement in place, the Department will simply have more options, more bases, upon which to exercise its discretion, ***Bluntly put: the best way simultaneously to protect consumers and to reduce the Department's workload once the licensing process is completed and the Department's work in debt collection becomes mostly an oversight and enforcement program is to screen out the low hanging fruit -- the worst of the worst actors – at the front-end application stage so they are never lawfully able to collect debts and harm California consumers in the first place, subsequently requiring expensive enforcement.***

  We know this decision by the Department to self-blind itself to the history of its applicants is a significant mistake of consequence both for the Department and for California's low-income families, small businesses, and consumers and fails to fulfill the promise of SB of SB 908 (Wieckowski). Consider that in just 2019, the Attorney General of Massachusetts secured a $4 million dollar settlement from Portfolio Recovery Associates, LLC "("PRA") after an investigation found it had "engaged in deceptive practices ***that were particularly harmful to low-income, elderly, and disabled consumers***, and routinely pursued consumers with only exempt sources of income such as social security, social security disability, and supplemental security income. Consumers who told the [PRA] that they relied only on exempt income ***were pressured by the company to pay money they should have been entitled to keep.***"[2] The investigation also found that PRA "***often lacked proof that consumers actually owed the debts it collected,*** which resulted in the company pursuing the wrong consumer or wrong amount. ***The company also pursued debts that had already been paid*** or were so old they were beyond the statute of limitations and legally unenforceable. Portfolio also failed to notify consumers of their rights to request proof of a debt and to provide proof of a debt when requested by consumers."[3]

  Underscoring the urgent relevance of past wrongdoing to protecting Californians from harm in the future, PRA was accused of doing *the exact same thing in 2015* and entered

[2] *See* https://www.mass.gov/news/ag-healey-secures-4-million-from-national-debt-buyer-to-pay-back-consumers-harmed-by-abusive. (emphasis added).
[3] Ibid.

into a consent order with the CFPB[4] and that PRA (along with Sherman Financial Group) entered into a settlement with the New York Attorney General in 2014 for filing lawsuits on claims that were outside the statutes of limitation. [5]

No doubt PRA and the Sherman Financial Group will be seeking a license from the Department. They should not be able to do so without being required to disclose, for the Department's consideration, a substantiated record of wrongdoing harming thousands of consumers. Arguably, no other category of information is more important.

- ***The draft regulations fail to embrace two recommended changes to the bond requirements that cost the Department nothing but are of vast importance to consumers.*** The draft regulations omit an express and simple requirement that applicants' bonds be for the benefit of consumers, among other interests; and that consumers are primary if the bond size turns out to be insufficient relative to claims. To require this in authority-clarifying regulations costs the Department literally nothing – requires not an additional hour of Department time to implement beyond adding the provision to the draft regulations. Yet, this simple statement in the regulation would cement the usefulness of the bonds as a consumer protection of last resort, to their enormous and enduring benefit.

  The draft regulations also fail simply to memorialize the Department's discretion to require a larger bond if needed to protect consumers. We respectfully can imagine no reason for not memorializing the Department's discretion to require bonds actually sufficient to serve their intended consumer protecting purpose thereby making any legal challenge to such an exercise of discretion far more challenging to bring, let alone win. We believe that the Department can and should include in these ground-laying application regulations at least a schedule of presumptive bond amounts based on the scope of collection activity in California. But, if for some reason the Department fails to do this it should to memorialize its discretion plainly state in the regulation that it may increase the bond at any further time based on volume or other information relevant to bond size.

  Once again, the forthcoming harm is not conjectural. Consider an example too often seen by nonprofit legal services agencies offering legal help to low income consumers: the collection by debt buyers of car loan deficiencies. Debt buyers often file lawsuits mere weeks before a statute of limitation is set to expire. They then often engage in "sewer service" – filing a proof of substitute service of summons when the low income consumer defendant has not lived at the location for years. The low income consumer never actually gets notice of the lawsuit and the debt buyer obtains a default judgment and begins collection efforts on consumers who are living paycheck-to-paycheck. When a few such desperate consumers arrive at legal aid agencies a portion of the damage can usually be undone with a motion to vacate the default judgment. However, other damage done to them such as garnished

[4] https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-the-two-largest-debt-buyers-for-using-deceptive-tactics-to-collect-bad-debts/.
[5] https://ag.ny.gov/press-release/2014/ag-schneiderman-announces-settlements-two-major-consumer-debt-buyers-unlawful.

wages, levied bank accounts, credit reporting of a judgment, cannot be undone easily without years of litigation. Worse, some debt buyers intentionally exist in name only and make themselves judgment proof, hiding assets from which a consumer can easily collect. Others simply refuse to reimburse consumers no matter how clear the legal obligation to do so knowing they can only be forced to if the consumer files and wins a lawsuit, and also knowing the consumer does not have the time or funds to pursue such litigation.

***This grim scenario is exactly what the bond requirement is supposed to prevent from ever happening.*** Requiring bond amounts calibrated to the actual exposure of consumers would accomplish two goals: (i) encourage better behavior by debt buyers and debt collectors so they bond does not need to be used, and (ii) provide consumers an alternative to recover funds in the event a debt collector or a debt buyer is unable to or refuses to reimburse consumers to make them whole.

## THESE CHANGES SHOULD BE MADE NOW.

It will be far harder once these regulations are in-place to change them in the future to embrace the proposals requested by the undersigned groups representing the intended beneficiaries of debt collection licensure. There are no automatic renewals in the regulations. Licenses issued now endure forever unless revoked or otherwise terminated by force of law. Thus, those licensees approved today without the Department being aware of their dangerous prior histories or with patently inadequate bond amounts will be entitled to continue to operate until the Department revokes their ability to do so after an expensive legal process when, by definition, it is too late to prevent harm to a large number of consumers from occurring, when such harm prevention is the very point of licensure.[6]

We recognize that the Department has a defined time period to license and begin to regulate all of the debt collectors in California. However, we note that many of the consumer and small business group recommendations from the June 8, 2021 joint comment letter do not impose burdens on the Department beyond those that will already occur because of what is contained in the draft regulations. This is especially true when our proposals simply require an applicant to provide or self-report more information as a part of the initial application.

For the Department's convenience, an appendix at the end of this comment specifically identifies the regulations most urgently in need of reform and offers a brief narrative for each.

## COMMENTS TO PROPOSED CHANGES TO THE DRAFT REGULATIONS

The undersigned have just a few comments on the changes proposed in the most recent draft, since our major concerns relate to what is omitted from the modified draft.

[6] Screening out the worst-of-the-worst actors now is especially vital as so many of the constituencies we represent have been devastated economically by the pandemic. Screening out the worst actors is thus more urgently required now than perhaps ever before; certainly since the economic disaster of 2008.

**Proposed change to section 1850.7(a)(9).**

**§ 1850.7. License Application for Debt Collector.**

(9) MANAGEMENT CHART: An applicant shall file with NMLS a management chart identifying by individual name and title, the applicant's:

~~The management chart must identify the applicant's compliance reporting and internal audit structure.~~

**OPPOSE:** This change deletes the requirement that the applicant's required "management chart must identify the applicant's compliance reporting and internal audit structure." The undersigned respectfully oppose this deletion. Having an applicant "show its work" on the critical issue of whether it has an infrastructure that promotes compliance with the laws the Department enforces is a sensible way to test which applicants are reliably ready and able to comply with the law. If there is some barrier to filing this compliance structure in NMLS, then the regulation could instead be modestly changed to require it to be filed with the Department.

**Proposed change to section 1850.7(a)(10)(D).**

(10) BUSINESS ACTIVITIES: In addition to the identification of business activities required on Form MU1, an applicant shall file with NMLS a detailed description of the applicant's business activities that includes the following information:

~~(D) Whether and to what extent the applicant intends to use third parties to perform any of its debt collection functions, such as marketing, collecting or any other functions and if so, the names of the third parties and their website address and principal place of business.~~

**OPPOSE:** This change deletes the requirement that the applicant include in the application the names, website addresses, and principal place of business of third parties it "intends to use" "to perform any of its debt collection functions, such as marketing, collecting or any other functions."

In the service of preventing harm from occurring in the first place, the point of an application is to test whether the applicant is likely or unlikely to obey the laws that protect consumers from harm.

If an applicant intends to use third parties to any significant extent that are not themselves applying for a license from the Department, this means that the point of testing the applicant's background, qualifications, and competencies through the application is frustrated. The entity that will actually be interfacing with consumers – the entity that holds the financial lives of vulnerable consumers in its hands – may be a total stranger to the Department, operating as if it were a licensee but entirely unscreened.

Respectfully, the Department should not blind itself to the possible inadequacy of its own application process. No public policy we can imagine supports this deletion.

**Proposed change to section 1850.7(a)(14).**

~~(15~~14) SUPPLEMENTAL INFORMATION: An applicant shall file the following information on debt collection activities as of the prior year-end ~~directly~~ with the Commissioner through NMLS~~by emailing the following information to the Debt Collection Licensing Program at DebtCollectionLicensing@dfpi.ca.gov~~:

- ~~The total dollar amount of debt collected from consumers as of the prior calendar year-end. The information is required to determine whether a higher surety bond amount may be required pursuant to California Financial Code section 100019, subdivision (e)(2).~~

**OPPOSE:** This section initially required two volume numbers, and in our comment letter we asked for a third. As the Department proposes to change this draft regulation, the section keeps the requirement to provide the *net* proceeds generated by California debtor accounts but for reasons we respectfully cannot infer it deletes from the application the easier-to-calculate *total* dollar amount of debt collected from consumers as of the end of the prior calendar year. The net proceeds of a collector by definition does not reveal as much about the width and breadth of a collector's interaction with California consumers as the total amount. In this regard, then, the Department appears to be deleting the more probative of the two amounts (although both alone and, especially, in comparison, are usefully revealing). It also did not adopt our suggestion that the amount attempted to be collected is independently relevant as a measure of the scope of activities; as this may be a much higher amount than the actual collections.

The Department also proposes deleting a reference to needing the total volume to determine whether or higher surety bond amount may be required. But, this is one reason why the volume information is useful: to see whether and to what extent consumers may be exposed to harm by granting an application.

Respectfully, we can conceive of no public policy properly prioritizing harm prevention and consumers that supports these deletions.

**Proposed changes to section 1850.50.**

**§ 1850.50. Surety Bond.**

(a) All surety bonds, amendments, cancellations, notices of claims, and information related to surety bonds such as riders and endorsements shall be filed with NMLS for transmission to the Commissioner.

(b) The surety bond shall be in the form of the "electronic surety bond form," titled "SURETY BOND, DEBT COLLECTION LICENSING ACT LICENSEE BOND", ESB Form Version 1 Effective 07/01/2021, NMLS Version: CA-DFPI – 07/01/2021, incorporated herein by reference in its entirety.

(c) For purposes of obtaining a license, an applicant shall initially file a surety bond of at least $25,000.

(d) ~~The Commissioner may set a higher minimum surety bond amount for a licensee based on the total dollar amount of consumer debt collected by the licensee. Upon notification by the Commissioner of the new surety bond amount, the licensee shall file the new surety bond with NMLS.~~

(e) ~~The Commissioner may periodically change the amount of a licensee's surety bond based on any changes to the total dollar amount of consumer debt collected by the licensee.~~

**OPPOSE:** The proposed change deletes (d), which reads: "The Commissioner may set a higher minimum surety bond amount for a licensee based on the total dollar amount of consumer debt collected by the licensee," plus a related sentence. It also deletes (e), which stated that the Commissioner may periodically change the amount of the bond based on "any changes to the total dollar amount of consumer debt collected by the licensee."

Why would the Department deny itself the benefits of memorializing in the regulation he discretion to require a higher surety bond if, in the Department's discretion, such an increase is warranted? The Department does and should properly have this authority. It is a critical backstop protection for harmed consumers with no other recourse. Memorialization in regulation likewise makes any challenge to the exercise of the Department's to require additional bonding far harder to win and less costly to defend.

Respectfully, we can conceive of no public policy rationale for these changes that prioritizes consumers and the Department's broad, statute-based discretion to protect them.

## CONCLUSION

No additional work would be required by the Department asking for indisputably relevant ounce-of-prevention information allowing it easily and inexpensively to identify and screen-out the worst actors. No additional work would be required of the Department if it clarified in regulation its own discretion to prevent future challenges to its enforcement, including requiring increases in bonds if warranted to protect consumers from being harmed without recourse.

California's vulnerable consumers and small businesses will never in recent history be more vulnerable and exposed to bad debt collection actors than in the coming years.

With profound respect, the Department should neither purposefully deny itself the cost-free ability to identify and prevent the worst actors from harming Californians and it should not deny itself the discretion to require additional security for consumers to protect them from and compensate them for law-breaking.

Respectfully submitted:

*California Association for Micro Enterprise Opportunity (CAMEO)*

*California Low Income Consumer Coalition (CLICC)*

*California Reinvestment Coalition*

*Center for Responsible Learning (CRL)*

*Community Legal Aid SoCal*

*Consumer Federation of California (CFC)*

*Legal Aid of Marin*

*Office of Kat Taylor*

*Public Law Center*

**APPENDIX TO COMMENTS, ANALYSIS, AND RECOMMENDATIONS FROM CONSUMER, SMALL BUSINESS, AND LOW-INCOME GROUPS TO PROPOSED SECOND DRAFT OF DEBT COLLECTION REGULATIONS (SUBCHAPTER 11.3 OF TITLE 10 OF THE CCR, SECTION 1850, *ET SEQ.*) ADDRESSING PROCESS AND GROUNDS FOR GRANTING DEBT COLLECTOR LICENSE APPLICATIONS**

In our June 8, 2021 comment, the undersigned offered many recommendations. The ones that are the most important – that simply seek to obtain the most probative information of all and cement the usefulness of the bonds – are discussed below.

**RECOMMENDATIONS 4, 5, 6, AND 8:**

Recommendations 4, 5, 6, and 8 – again, in conformity with what other states have done for years – simply require more information to be supplied to the Department *by applicants*. Indisputably, the information that would be required by the modest reforms previously suggested is information the Department could find useful in screening out those worst-of-the- worst companies that will most likely be the subject of future, costly complaints and enforcement actions.

Proposed section 1850.7(15) already addresses "Supplemental Information." That proposed regulation requires that an applicant disclose the amount collected in the prior year in California. It would, however, also be helpful for the Department in assessing the adequacy of the bond required and in prioritizing application processing if an application also disclosed the size of the portfolio of debt owed by California residents which is under collection of the applicant. This information is already required in the annual report under Financial Code section 10021(a)(1)-(3), but it is not included in the proposed regulation's list of application content. It should be and it is no additional work for the Department were it included.

Thus, for your reconsideration, the **fourth** amendment recommended is to section 1850.7(a)(10) and would read:

(10) BUSINESS ACTIVITIES: In addition to the identification of business activities required on Form MU1, an applicant shall file with NMLS a detailed description of the applicant's business activities that includes the following information: …

**(F) The name, mobile phone number, address, physical address, and email address of the manager for every office or unit, including branch managers, who shall be responsible for the actions of debt collectors working in that office or unit.** [7]

**NOTE:** Relatedly, we observe that the requirement that "[a]n applicant shall register its branch

[7] Copied nearly verbatim from Colo. Rev. Stat. section 5-16-119, quoted above in the text.

offices by filing with NMLS a Form MU3 for each branch office" from section 1850.7(a)(16) of the proposed regulations is precedented.[8]

The **fifth** amendment recommended is to section 1850.7(a)(15) and would read:

(15) SUPPLEMENTAL INFORMATION: An applicant shall file information on debt collection activities as of the prior year-end directly with the Commissioner by emailing the following information to the Debt Collection Licensing Program at DebtCollectionLicensing@dfpi.ca.gov:

- The total dollar amount of debt collected from consumers as of the prior calendar year-end. The information is required to determine whether a higher surety bond amount may be required pursuant to California Financial Code section 100019, subdivision (e)(2).
- The total dollar amount of net proceeds generated by California debtor accounts (i.e., from accounts that are owned by consumers who reside in California at the time the consumer made a payment on the account) as of the prior calendar year-end. The information is required to calculate the licensee's assessment for the year of licensing pursuant to California Financial Code section 100020, subdivision (a).
- **To provide the Commissioner an opportunity to assess the size of the applicant's debt collection activities for purposes of assessing an appropriate bond and to prioritize the processing of applications, the face value of California debtor accounts in the licensee's portfolio in the preceding year as described in Financial Code section 10021(3).**

The **sixth** amendment recommended is to section 1850.7(a)(17) and would read:

[8] Colorado law requires notice of branch offices, making investigations and enforcement far easier and less cumbersome. (Colo. Rev. Stat. section 5-16-119 (6) "A collection agency with branch offices must notify the administrator in writing of the location of each branch office within thirty days after the branch office commences business.")

(17) BANK ACCOUNT/QUALIFYING INDIVIDUAL: An applicant is not required to provide bank account information in Section 10 of Form MU1 or information on a qualifying individual in Section 17 of Form MU1. **However, the Commissioner may require such financial statements, proof of insurance, and references of all applicants or for a license or direct owner, executive officer, or indirect owner as the Commissioner deems necessary and may make or cause to be made an independent investigation concerning the applicant's or direct owner's, executive officer's, or indirect owner's reputation, integrity, competence and net worth. The investigation may cover all managerial personnel employed by or associated with the applicant.**

**NOTE:** The underscored language immediately above does not require the Department or an applicant to do anything. It simply memorializes and thus helps place beyond legal challenge the Department's discretion to ask for additional information if it wants to.

The **eighth** recommendation simply requires the applicant to provide additional canary-in-the-coal mine information to that *already required by the draft regulations*.

Proposed section 1850.10(b)(1) already and wisely requires "individuals who are not residents of the United States to disclose **"[c]ivil court and bankruptcy court records** concerning the individual for the past ten (10) years." This court information required of *nonresidents* is indisputably relevant to the Department's statutory obligation to "ascertain the experience, background, honesty, truthfulness, integrity, and competency of an applicant" who is a resident. It also should be equally relevant for evaluating "the experience, background, honesty, truthfulness, integrity, and competency "of applicants who are residents of the United States. Thus, the requirement *should be explicitly extended to all applicants and included in proposed section 18507.*

But more critically, the story told by the vaguely referenced "civil court … records"[9] requested is not the whole story. It doesn't include arbitration awards, criminal convictions or accusations, or settlements.

Respectfully, under what public policy rationale are "civil court records" relevant but criminal convictions not?

Almost every DCA licensed profession has a requirement that insurers and/or licensees self-report *settlements, judgments, and convictions* to their licensing agencies. For just two of the many, many

[9] What "records" do you mean? Why not be specific? The most probative records are complaints, dispositve motions, rulings on contested matters, and judgments.

examples, *see*, e.g., Business & Professions Code sections 5588.1 (architects), and 6670.1 (engineers). Indeed, and underscoring why DCA licensing agencies require such disclosures, it is challenging to envision how the Department will discover information that could lead to denial of a license pursuant to proposed section 1850.15(b) and (c)[10] without the aid of such commonplace reporting.

Therefore the **eighth** amendment recommended is to add a section 18507(a)(19) to read:

> **(19) RECORD OF LEGAL DISPUTES An application for a license as a debt collector shall include for each applicant and each direct owner, executive officer, or indirect owner:**
>
> **(A) every final judgment issued by a court or final administrative agency determination, including final judgments on appeal, settlement, or arbitration award including awards on appeal, that is $10,000[11] or greater that involved claims involving debt collection, or claims involving the honesty, truthfulness, or integrity of the applicant or direct owner, executive officer, or indirect owner, including claims brought pursuant to Title 1.6C (commencing with Section 1788) or Title 1.6C.5 (commencing with Section 1788.50) of Part 4 of Division 3 of the Civil Code, within the past 7 years;**
>
> **(B) every proceeding that involved an action taken against a license issued to the applicant, direct owner, executive officer, or indirect owner for the 7 years prior to the application;**

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[10] Advocates strongly support proposed section 1850.15 (c). The statute permits but does not require the Department to license affiliates together with the company that controls them. See, Fin. Code. Section 100003(a)(2). The Department's decision to do so is good policy, preventing both duplicative licensing applications for those regulated and effective enforcement for the regulator. Notably, without this proposed regulation, affiliates engaging in the most abusive and unlawful of practices might be allowed to enter into the California marketplace simply by being invisibly bundled into a larger business group applicant. Moreover, while this regulatory packet addresses solely license applications, a similar regulation is also necessary with respect to suspension and revocation and should be included when those standards are proposed for regulation.

[11] California's small claims court jurisdictional limit is $10,000. (California Code of Civil Procedure, Section 116.221.) It should be noted that simply because many of the examples cited from other states are to those states' statutes that does not put promulgation of regulations based upon those statutory examples beyond the promulgating reach of the Department. The only relevant factor in determining whether the Department has the authority to follow the example of another state is whether the Department's enabling statutes are broad enough to authorize the quasi-legislating. Here, as discussed, the Department's discretion is vast. *See discussion*, supra, at pp. 7

**(C) an affidavit that they will each report to the Commissioner on a form provided online by the Commissioner every judgment, adverse administrative agency determination, award, or settlement, including final judgments on appeal, settlement, or arbitration award including awards on appeal, that is $10,000 or greater that involved claims involving debt collection, or claims involving honesty, truthfulness, or integrity of the applicant or direct owner, executive officer, or indirect owner, including claims brought pursuant to Title 1.6C (commencing with Section 1788) or Title 1.6C.5 (commencing with Section 1788.50) of Part 4 of Division 3 of the Civil Code,**
**within 30 days of issuance of the decision, award, or signing of the agreement; and**

**(D) an affidavit that they will each report to the Commissioner on a form provided online by the Commissioner every proceeding that involved an action taken against a license issued to the applicant, direct owner, executive officer, or indirect owner within 30 days the decision is issued.**

**(E) No disciplinary action shall be taken by the Commissioner against an applicant, direct owner, executive officer, or indirect owner for violating this subparagraph if the Commissioner received the information pursuant to section 1850.8.**

**NOTE:** These regulations provide far better and more specific guidance to debt collector applicants and, thus, a more lawsuit-resistant basis upon which to revoke an application if information that was supposed to be provided wasn't.

But, more broadly, and in summation on this point, we respectfully can conceive of no information more probative, more in line with the harm-prevention purpose of licensure, more useful in preventing those companies most likely to require expensive enforcement later from being admitted in the first place, than this information. No public policy supports not asking for it. Obtaining it will not cause the Department to miss deadlines. We respectfully reiterate our request the Department require applicants to provide this information – information they have at their fingertips – so the Department does not unwittingly unleash upon California consumers debt collection agencies with persistent and dismal records elsewhere at an historically

**RECOMMENDATIONS 13 AND 14:**

Our suggestions to proposed section 1850.50 dealing with the critical protection of surety bonds likewise require no additional work for the Department. They simply memorialize discretion for

the Department to use as it wishes in service of protecting vulnerable consumers. To memorialize your discretion places it far more certainly beyond legal challenge and costs nothing.

Consider, please: the proposed regulation properly recognizes the critical role surety bonds play in protecting consumers from the worst actors; those whose actions cause them to have their licenses revoked, thereby forcing them out of business. Without sufficient bond security, the Department could be placed between the rock of protecting future consumers by revoking a license and the hard place of putting a licensee out of business thereby denying already-harmed consumers a source of compensation for the wrongs they have suffered. Almost, if not every other, licensing state has a bond requirement.

What is missing from proposed section 1850.50 is a more certain and, for consumers, reassuring regulation calling for the escalation of bonding as debt collection activity increases in the proposed subdivision (h). Take the example of Minnesota. M.S. section 332.34 provides:

> The commissioner of commerce shall require each collection agency licensee to file and maintain in force a corporate surety bond, in a form to be prescribed by, and acceptable to, the commissioner, and in a sum of at least $50,000 plus an additional $5,000 for each $100,000 received by the collection agency from debtors located in Minnesota during the previous calendar year, less commissions earned by the collection agency on those collections for the previous calendar year. The total amount of the bond shall not exceed $100,000.

These amounts are self-evidently too low for a state with nearly 40 million residents. However, the *approach* is the right one and it is sufficiently important that more specificity than currently exists in the proposed subdivision (h) is respectfully warranted.

Also missing from the proposed section 1850.50 is an express statement of who is the intended beneficiary of the bond; namely, consumers. Consider North Carolina's memorialization of this at N.C.G.S. § 58-70-20:

> The bond shall expressly provide that the bond is for the benefit of any person, firm or corporation for whom the collection agency engages in the collection of accounts.

The **thirteenth and fourteenth** amendment requests are to proposed section 1850.50 and would read as follows:

**§ 1850.50. Surety Bond.**

(a) All surety bonds, amendments, cancellations, notices of claims, and information related to surety bonds such as riders and endorsements shall be filed with NMLS for transmission to the Commissioner **and shall expressly provide that the bond is for the benefit of any person, firm or corporation for whom the collection agency engages in the collection of accounts and all persons with respect to whom the licensee collects or attempts to collect a debt, with first priority to consumers.**

(b) The surety bond shall be in the form of the "electronic surety bond form," titled "SURETY BOND, DEBT COLLECTION LICENSING ACT LICENSEE BOND", ESB Form Version 1 Effective 07/01/2021, NMLS Version: CA-DFPI – 07/01/2021, incorporated herein by reference in its entirety.

(c) For purposes of obtaining a license, an applicant shall initially file a surety bond of at least $25,000 **or such higher amount as the Commissioner may set for the reasons described in (g).**

(d) The Commissioner may set a higher minimum surety bond amount for a licensee based on the total dollar amount of consumer debt collected by the licensee **or such other factors as the Commissioner finds necessary to protect the persons, firms or corporations for whom the collection agency engages in the collection of accounts and all persons with respect to whom the applicant or licensee collects or attempts to collect a debt.** Upon notification by the Commissioner of the new surety bond amount, the licensee shall file the new surety bond with NMLS

(h) The Commissioner ~~may~~ **shall require the applicant to sign an acknowledgement as a part of the application that the Commissioner will not less than every two years review each applicant's bond and shall have the discretion as a condition of continued licensure to change the amount of a licensee's surety bond based upon any changes to the total dollar amount of consumer debt collected by the licensee or upon such other factors as the Commissioner deems necessary to protect the persons, firms or corporations for whom the collection agency engages in the collection of accounts and all persons with respect to whom the applicant or licensee collects or attempts to collect a debt, with first priority to consumers.**[12]

**NOTE:** We recognize that setting the bond on an applicant-by-applicant basis would indeed be more time consuming than a single bond regardless of size. That is not what these amendments propose. Moreover, the Department should as proposed require information in the application that it could use *for future customization of the bond amount.* Then, as part of the current proposed regulation, or at a later time, the Department could without having to re-engage the regulatory process develop a presumptive schedule of bond amounts with breakpoints based on a measure of collector volume in California. Alternatively, the licensing regulation could indicate that the Department

22 Licensing is essentially about the standards that govern legally exclusive entry to a business or profession at the front-end and the standards by which a business or individual licensee is required to end participation on the back-end. While recognizing that these proposed regulations address the standards for applying for licensure, the undersigned welcome the opportunity in the near future to discuss with the Department the content of regulations addressing suspension, revocation, and impairment of licenses. Such regulations should continue the arc created by these regulations such that the Department persists in placing consumer protection at the heart of the debt collection licensing act.

will or may impose a future license condition to adjust the bond based on volume and potential risk to consumers or others. This would put applicants on notice and provide the Department the volume information in the initial application for later use when it would be more expensive and cumbersome to obtain at a later time.

Further, recommendation 13 -- one of the most important recommendations the consumer and small business advocates made in the June 8 comment letter with respect to the bond –-- imposes no workload on the Department at all. The suggestion simply that the regulation expressly provide that consumers who are the targets of collection activities are beneficiaries of the bond, and have priority over other claimants if the bond, poses zero risk of the Department missing its statutory regulation deadline but will laudably ensure that the benefits of the bond are placed largely beyond legal contest when and if needed.