FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

Section 1850(a). The proposed regulations as originally noticed to the public define "affiliate" as any person controlling, controlled by, or under common control with, the specified person, directly or indirectly, through one or more intermediaries and includes an affiliated company, and provide that an affiliate is an applicant for purposes of the Debt Collection Licensing Act. The Department has deleted the following language from the proposed regulation: "An affiliate is an applicant for purposes of the Debt Collection Licensing Act." The Department made this change in response to a comment received. (See response to Comment No. 7.5 below.) The Department determined that the language unintentionally suggests that every affiliate of an applicant needs to obtain a license. However, only affiliates that meet the definition of "debt collector" must be licensed. The clarification is necessary to reduce the filing of unnecessary applications and potential confusion over which affiliates of an applicant need to be licensed.

Section 1850(b). The proposed regulations as originally noticed to the public define "applicant" as any person, including any of its affiliates, who applies for a license under the Debt Collection Licensing Act. The Department has added the following language to the definition: "An affiliate who is not applying for a license is not an applicant for purposes of licensure under the Debt Collection Licensing Act." This change is necessary to be consistent with the change made to Section 1850(a) discussed above.

Section 1850(c). The proposed regulations as originally noticed to the public define "branch office" to mean a location other than that applicant's principal place of business identified in a license application or an amended application. The Department has added the following language to the definition: ". . . if activity related to debt collection occurs at the location and the location is held out to the public as a business location or money is received at the location or held at the location. For purposes of filing a Form MU3, holding out to the public includes receiving postal correspondence from the public at the location, meeting with the public at the location, including the location on business cards, letterhead, or any other correspondence, including signage at the location, or any other representation to the public that the location is a business location of the applicant or licensee." The Department made this change in response to comments received. (See responses to Comment Nos. 6, 9.1, 12.1, 13.7, and 18.3 below.) This change is necessary to clarify when a location is a branch office for purposes of filing a Form MU3 to register the location with the Department.

Section 1850(h). The proposed regulations as originally noticed to the public define "debt collector" by adding the definition from Financial Code section 100002, subdivision (j), of the Debt Collection Licensing Act. The Department has changed Section 1850(h) to read: "Debt collector" has the same meaning as set forth in subdivision (j) of Section 100002 of the Financial Code." The change is necessary to clarify that the definition for purposes of licensure refers to the statutory definition contained in the Debt Collection Licensing Act.

Section 1850(o). The proposed regulations as originally noticed to the public define "policies and procedures." The Department has deleted the definition from Section 1850(o) and renumbered the definition of "principal officers" in the following subsection from (p) to (o). The Department made this change in response to a related change to Section 1850.7(a)(13). (See response to Comment No. 12.8 below.) The Department determined that requiring applicants to provide their policies and procedures in the license application is unnecessary for purposes of issuing licenses. The change is necessary to require applicants to only provide information that is directly relevant to applying for a license and to eliminate the need for the Department to review and maintain unnecessary information without reducing consumer protection.

Section 1850.6.1. The proposed regulations as originally noticed to the public did not include Section 1850.6.1. The Department has added Section 1850.6.1 in connection with a related comment and change made to Section 1850.10(a)(4). (See response to Comment No. 12.5 below.) The investigative background reports of employees who are in foreign countries may be written in a language other than English. Section 1850.10(a)(4) as originally noticed to the public required the reports to be in the English language. The Department has determined that permitting applicants to provide an English translation of the investigative background report instead of requiring the original report to be in English is reasonable, provided that the translator's certification is also provided. This is necessary to ensure that the translation is a true and accurate translation of the report. The change will benefit applicants by reducing the costs to prepare the reports without adversely impacting the Department's ability to investigate the individuals.

Section 1850.7(a)(2). The proposed regulations as originally noticed to the public require applicants to file the form to appoint the Commissioner as agent for service of process directly with the Commissioner. The Department has changed the filing requirement to require applicants to file the form through NMLS. Recent changes in NMLS document filing protocols allow applicants to file other types of documents through NMLS. Applicants can electronically file the appointment form with their other documents through NMLS instead of filing the form separately with the Department. The change is necessary to streamline the filing requirements and reduce the Department's workload by centralizing all filings through NMLS and eliminating the need to maintain a separate filing system for the forms.

Section 1850.7(a)(6)(A). The proposed regulations as originally noticed to the public require certain individuals to provide their passport number and the name of the country that issued the passport. The Department has deleted the requirement to submit this information. The Department made this change in response to comments received. (See responses to Comment Nos. 9.3 and 13.2 below). The Department determined that requiring passport information was duplicative and therefore unnecessary for verifying an individual's identity. The change is necessary to reduce the information an applicant is required to submit to apply for a license and to eliminate the need for the Department to review and maintain unnecessary information without adversely impacting consumer protection.

Section 1850.7(a)(7). The proposed regulations as originally noticed to the public require applicants to file with NMLS a copy of the California Department of Justice Request for Live Scan form for each individual required to be fingerprinted as proof of completion of fingerprinting. The Department deleted the requirement to submit

this information. The Department determined that the information is unnecessary because the Department does not issue licenses until it receives fingerprint information from the Department of Justice for all individuals required to be fingerprinted. The change is necessary to reduce the information an applicant is required to submit to apply for a license and to eliminate the need for the Department to review and maintain unnecessary information without adversely impacting consumer protection.

Section 1850.7(a)(8). The proposed regulations as originally noticed to the public require certain individuals to provide authorization for NMLS to obtain a credit report. The Department has added an additional requirement that the individuals must provide an explanation of all derogatory credit accounts in the credit report. The Department determined that the information is necessary to assist the Department in determining the honesty, truthfulness and integrity of officers, directors, and other individuals as required under Financial Code section 100003, subdivision (b)(8), and the applicant's eligibility for licensure under Financial Code section 100004, subdivision (a). The change will improve consumer protection by strengthening the Department's investigation of individuals who are responsible for the applicant's debt collection activities.

Section 1850.7(a)(9). The proposed regulations as originally noticed to the public require applicants to provide information on their compliance reporting and internal audit structure. The Department has deleted the requirement in response to a comment received. (See response to Comment No. 10.1 below.) The Department determined that the information is unnecessary for purposes of issuing licenses. The change is necessary to reduce the information an applicant is required to submit to apply for a license and to eliminate the need for the Department to review and maintain unnecessary information without adversely impacting consumer protection.

Section 1850.7(a)(10)(D). The proposed regulations as originally noticed to the public require applicants to provide the names, website addresses and principal place of business of third parties the applicant intends to use to perform any of its debt collection functions. The Department has deleted the requirement in response to comments received and renumbered the following subsection requiring applicants to identify any additional activities the applicant intends to engage from (a)(10)(E) to (a)(10)(D). (See responses to Comment Nos. 9.4 and 13.3.) The Department determined that the information is unnecessary for purposes of issuing licenses. The change is necessary to reduce the information an applicant is required to submit to apply for a license and to eliminate the need for the Department to review and maintain unnecessary information without adversely impacting consumer protection.

Section 1850.7(a)(13). The proposed regulations as originally noticed to the public require applicants to provide their policies and procedures demonstrating how they will comply with California debt collection and debt buying laws. The Department has deleted the requirement in response to a comment received and renumbered the subsections following subsection (a)(13) accordingly. (See response to Comment No. 12.8.) The Department determined the requiring applicants to provide their policies and procedures in the license application is unnecessary for purposes of issuing licenses. The change is necessary to reduce the information an applicant is required to submit to apply for a license and to eliminate the need for the Department to

review and maintain unnecessary information without adversely impacting consumer protection. The change is also necessary to be consistent with the change to Section 1850(o) discussed above.

Section 1850.7(a)(15). The proposed regulations as originally noticed to the public require applicants to file directly with the Commissioner the total dollar amount of debt collected from consumers and the total dollar amount of net proceeds generated by California debtor accounts as of the prior calendar year-end. The Department has deleted the requirement to provide the total dollar amount of debt collected from consumers in response to a comment received. (See response to Comment No. 10.2.) The Department determined that information on the amount of debt collected is unnecessary for purposes of issuing licenses. The change is necessary to reduce the information an applicant is required to submit to apply for a license and to eliminate the need for the Department to review and maintain unnecessary information without adversely impacting consumer protection. The proposed regulations as originally noticed to the public also require applicants to file information on the total amount of debt collected and the total amount of net proceeds directly with the Commissioner. The Department has changed the filing requirement to require applicants to file the information on the total amount of net proceeds through NMLS. Recent changes in NMLS document filing protocols now allow applicants to file other types of documents through NMLS. Applicants can electronically file the information with their other documents through NMLS instead of filing it separately with the Department. The change is necessary to streamline the filing requirements and reduce the Department's workload by centralizing all filings through NMLS and eliminating the need to maintain a separate filing system for the information.

Section 1850.7(c). The proposed regulations as originally noticed to the public provide that the Commissioner will issue licenses. The Department has decided not to issue paper licenses under the Debt Collection Licensing Act and changed Section 1850.7(c) to provide that the Commissioner will notify applicants when they are approved for licensure. The change is necessary to avoid any confusion with respect to whether a paper license will be issued and reduce the Department's cost and workload in issuing licenses.

Section 1850.8(c). The proposed regulations as originally noticed to the public require applicants to file the form to appoint the Commissioner as agent for service of process directly with the Commissioner. The Department has changed the filing requirement to require applicants to file the form through NMLS. Recent changes in NMLS document filing protocols now allow applicants to file other types of documents through NMLS. Applicants can electronically file the appointment form with their other documents through NMLS instead of filing the form separately with the Department. The change is necessary to streamline the filing requirements and reduce the Department's workload by centralizing all filings through NMLS and eliminating the need to maintain a separate filing system for the forms.

Section 1850.9(b). The proposed regulations as originally noticed to the public require applicants to file with NMLS a copy of the California Department of Justice Request for Live Scan form for each individual required to be fingerprinted as proof of completion of fingerprinting. The Department deleted the requirement to submit this information. The Department determined that the information is unnecessary because the Department does not issue licenses until it receives fingerprint information from the Department of Justice for all

individuals required to be fingerprinted. The change is necessary to reduce the information an applicant is required to submit to apply for a license and to eliminate the need for the Department to review and maintain unnecessary information without adversely impacting consumer protection.

Section 1850.10(a)(4). The proposed regulations as originally noticed to the public require investigative background reports to be in English. The Department determined that permitting applicants to provide an English translation of the investigative background report instead of requiring the original report to be in English is reasonable, provided that the translator's certification is also provided. This change was made in response to Comment No. 12.5 and is related to the change made to Section 1850.6.1 above. The change is necessary to reduce unnecessary costs to the applicant to prepare the reports without adversely impacting the Department's ability to investigate the individuals.

Section 1850.10(b)(1). The proposed regulations as originally noticed to the public require investigative background reports to include the actual credit report. The Department changed the requirement to require an actual credit report for the individual only if available. The Department made this change in response to a comment received. (See response to Comment No. 12.7 below.) The change is necessary to reduce unnecessary costs to applicants to prepare the reports without adversely impacting the Department's ability to investigate individuals.

Section 1850.10(b)(4). The proposed regulations as originally noticed to the public require investigative background reports to include information on education records. The Department has deleted the requirement in response to comments received and renumbered the subsections following subsection (b)(4) accordingly. (See responses to Comment Nos. 9.9 and 13.11.) The Department determined that the information is unrelated to an individual's suitability for employment in the debt collection industry. The change is necessary to limit the investigation to only necessary and relevant information and reduce the costs to applicants to prepare the reports without adversely impacting the Department's ability to investigate the individuals.

Section 1850.10(b)(6). The proposed regulations as originally noticed to the public require investigative background reports of individuals who are not residents of the United States to include a search of social media concerning the individual. The Department has deleted this requirement in response to comments received and clarified the types of media records that should be included in the search. (See responses to Comment Nos. 9.9 and 13.11.) The Department determined that requiring investigations to include a search of social media is inconsistent with the Department's investigations of individuals who are residents of the United States. The change is necessary to ensure that the Department's investigative requirements are consistent and fair to individuals and reduce the costs of investigative background reports without adversely impacting the Department's investigations of the individuals.

Section 1850.11. The proposed regulations as originally noticed to the public provide information on the Department's information privacy policy. However, Section 1850.11 does not include some information required to be included in the policy. The Department has added the Department's address and the phone

number of the person responsible for the Department's records of the Debt Collection Licensing Program as required by California Civil Code section 1798.17. The changes are necessary to help individuals invoke their right to access their personal information by providing specific Department contact information.

Section 1850.14. The proposed regulations as originally noticed to the public entitled this section as "Evidence of Financial Responsibility." The Department has changed the name of the section to "Commissioner's Finding for Licensure" to better describe the section's purpose. Other than changing the name of the section, the Department did not make any changes to Section 1850.14. The change is intended to improve the usefulness of the regulations.

Section 1850.30(a). The proposed regulations as originally noticed to the public require applicants to file any change in their policies and procedures. The Department has deleted the requirement to file policy and procedure changes and specified that changes in information in the license application must be filed with the Commissioner through NMLS. The changes are in response to comments received. (See the responses to Comments Nos. 12.8 and 13.12.) The Department determined that requiring applicants to provide their policies and procedures in the license application is unnecessary for purposes of issuing licenses. The change is necessary to reduce the burden on applicants to file policy and procedure updates with the Department and the Department by eliminating the need to review and maintain the information and ensuring that it receives any required changes. This change is also necessary to be consistent with the change discussed in Section 1850(o) above.

Section 1850.30(d). The proposed regulations as originally noticed to the public require licensees to notify the Commissioner of a change in its principal place of business. The Department has changed the proposed regulation to clarify that the notice must be filed with the Commissioner through NMLS. The Department made this change in response to a comment received. (See the response to Comment No. 12.9 below.) The change is necessary to reduce any confusion concerning with whom to file the notice when moving the licensee's principal place of business.

Section 1850.50(d) and (e). The proposed regulations as originally noticed to the public provide in subsection (d) that the Commissioner may set a higher surety bond amount and require licensees to file a new surety bond for the higher amount upon notification by the Commissioner and provide in subsection (e) that the Commissioner may periodically change the amount of bonding required. The Department has deleted subsections (d) and (e). The Department made these changes in response to a comment received. (See response to Comment No. 10.2 below.) The Department determined that the provisions in subsections (d) and (e) are unnecessary because the proposed regulations set the bonding requirement at $25,000 for every applicant. The change is necessary to reduce confusion concerning the current bonding requirement to obtain a debt collection license.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF APRIL 23, 2021 THROUGH JUNE 8, 2021

Commenter 1, 2 and 3: George Uberti, California resident and consumer advocate

Comment Number 1.1.: The commenter requested the investigative background report required in Section 1850.10 for individuals who are not residents of the United States be amended to require applicants to pay for the cost of the report and the investigation to be carried out by a state agency. The commenter stated that the information required to be contained in these reports is extensive and not realistically attainable by a private investigator to the same extent as a government agency, which has the investigative tools and resources to conduct investigations in foreign jurisdictions, and it is in the interest of consumer protection and regulatory efficacy to have applicants pay the cost of the report directly to the state agency. The section also requires applicants to police themselves for conflicts of interest in the hiring of an investigative firm and the investigative firms to be able to compel criminal and civil history from foreign jurisdictions.

Response: The Department declines to make the requested changes. The Department does not have the investigative tools, resources, or capability to cost-effectively investigate individuals who do not reside in the United States. The Department will review the investigative background reports and if the Department has any concerns about the quality or completeness of the information in the report or the independence of the investigative firm, Section 1850.10 provides for the Department to follow up on the report and the investigative firm. Applicants under other licensing laws administered by the Department such as the Student Loan Servicing Act and the Escrow Law use investigative firms for similar background reports. With respect to requiring applicants to pay for the cost of the investigative background report, Section 1850.10 requires the applicant or the individual to pay for the cost. The Department has determined that this is necessary to provide flexibility to the parties in deciding who should pay for the cost of the report.

Comment No. 2: The commenter requested Section 1850.14 be amended to provide that “any matter, personal or professional” that may impact the Commissioner’s finding under Section 100012, subdivision (b)(7), of the Financial Code that the applicant will operate its debt collection business fairly should include anti-trust considerations of market share and anti-competitive conduct. The commenter stated that this is an opportunity to prevent enforcement redundancy between state and federal financial authority and streamline the framework of California’s commercial debt collection market to the benefit of consumers.

Response: The Department declines to make the requested change. The Debt Collection Licensing Act is a consumer protection law enacted to protect California residents from dishonest or unlawful collection practices by ascertaining the experience, background, honesty, truthfulness, integrity, and competency of applicants for collecting consumer debt. The Commissioner’s finding will be based on these criteria.

Comment No. 3.1: The commenter requested Section 1850.7(a)(1)(A) be amended to prohibit applicants or their associates or owners from using fictitious business names in connection with debt collection activities in California because the primary effect of fictitious business names is to conceal ownership and control of business operations resulting in market concentration. The commenter stated that the damaging exercise of market power by licensees through the use of fictitious business names greatly outweighs any potential efficiencies created by use of those names.

Response: The Department declines to make the requested change. Section 1850.7(a)(1) requires applicants to comply with California's fictitious business name law and to obtain the Commissioner's approval before using a fictitious business name. These are sufficient protections against the use of fictitious business names for unlawful purposes.

Comment No. 3.2: The commenter requested Section 1850.7(a)(5), (6) and (9) be amended to require all persons with direct and indirect ownership, financial control, and trustee and managerial interests and responsibilities named in these sections to comply with the provisions of anti-trust laws and particularly 15 U.S.C. section 18, banning any person from directly or indirectly acquiring the whole or any part of the share capital or assets of any person engaged in any activity that substantially lessens competition or restrains commerce.

Response: The Department declines to make the requested changes. Requiring applicants and certain individuals to comply with anti-trust laws as a condition of licensure is outside the legislative intent of the Debt Collection Licensing Act. The information the Department is proposing to require in the license application is intended to determine the applicant's eligibility for licensure in connection with collecting consumer debt.

Comment No. 3.3: The commenter requested the requirement in Section 1850.7(a)(13) to file policies and procedures demonstrating how the applicant will comply with the Debt Collection Licensing Act and other debt collection laws be amended include: how the applicant will comply with anti-trust laws, how other businesses or products offered or sold to consumers in Section 1850.7(a)(10) do not constitute unlawful tying arrangements under 15 U.S.C. section 2, and how the supplemental information required in Section 1850.7(a)(15) reflects the applicant's relevant market share in the California debt collection market to provide a reasonable projection of potentially unlawful market concentration.

Response: The Department declines to make the requested change because this change requires a legislative amendment to the Debt Collection Licensing Act. The policies and procedures required in Financial Code section 100019, subdivision (a), concern compliance with the Act.

Comment No. 3.4: The commenter requested the applicant's attestation to comply with various debt collection acts and regulations in Section 1850.7(a)(18) be amended to require them to attest to their intention to comply with anti-trust laws in Title 15 of the U.S.C.

Response: The Department declines to make the requested change. Requiring applicants to comply with anti-trust laws as a condition of licensure is outside the legislative intent of the Debt Collection Licensing Act. The information the Department is proposing to require in the license application is intended to determine the applicant's eligibility for licensure in connection with collecting debt from consumers.

Comment No. 3.5: The commenter requested the investigative background reports for individuals who are not residents of the United States in Section 1850.7(a)(6)(C) be amended to require a state agency to conduct the investigations and applicants to pay the cost of the investigative report directly to either the Department or the Secretary of State. The commenter stated that the potential for conflicts of interest in the filing of these reports is too great to permit applicants to investigate themselves or to directly contract for their own investigation, and it would be especially difficult to corroborate the information without the resources available at the government level.

Response: The Department declines to make the requested changes. See the Department's response to a similar comment made by the commenter in Comment No. 1.1 above. The California Secretary of State is not authorized to conduct investigations or to collect fees from applicants under the Debt Collection Licensing Act nor does it have the resources or capability to conduct investigations under the Act. The functions of the California Secretary of State include overseeing elections in California, maintaining various registries such as California-registered voters, and maintaining records on entities conducting business in California.

Commenter 4: John Hanna, Esq., Hanna & Van Atta

Comment No. 4: The commenter stated that lawyers who represent homeowner associations and their clients have concerns with the meaning of terms in the Debt Collection Licensing Act such as "consumer credit transaction", "debt collector", "debt collection", and the like. The commenter recommended amending the proposed regulations to provide that homeowners associations, their managers and association counsel are exempt from the Debt Collection Licensing Act (i.e., not required to be licensed) but are subject to the Rosenthal Fair Debt Collection Practices Act. The commenter stated that common interest development associations should not be required to be licensed to collect assessments from their association members and association attorneys and managers should not be required to be licensed to send delinquency notices and letters to association members who are delinquent in paying their assessment in their normal course of representing clients.

Response: The Department declines to make the requested change because it concerns statutory definitions in the Debt Collection Licensing Act and is not specifically directed at the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).] The proposed regulations adopt the license application, process for applying for a debt collection license, and other provisions relevant to licensing, including amendment, denial, and surrender of a license. However, the Department will consider the comment in evaluating the need for future rulemaking.

Commenter 5: Andrew Duke, President and CEO, Online Lenders Alliance

Comment No. 5: The commenter expressed concern over the real-world impacts of the proposed regulations and the ability of covered persons to comply in a manner that is both unambiguous and realistic. The commenter requested further explanation and bright-line clarification of certain definitions and activities that constitute (or do not constitute) debt collection as defined in Financial Code section 100002, subdivision (i), of

the Debt Collection Licensing Act. The commenter noted that there is unreconciled friction between the definitions of "debt collection" and "debt collector" and the definitions of "debt collection", "debt collector", "consumer credit transaction" and "consumer debt/credit" in the Act are vague and need to be clarified to enable potentially covered persons to know when the threshold of "debt collection" is met.

Response: The Department declines to make the requested changes because they concern statutory definitions in the Debt Collection Licensing Act and are not specifically directed at the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).] The proposed regulations adopt the license application, process for applying for a debt collection license, and other provisions relevant to licensing, including amendment, denial, and surrender of a license. However, the Department will consider the comments in evaluating the need for future rulemaking.

Commenter 6: Missy Meggison, Co-Director, Consumer Relations Consortium

Comment No. 6: The commenter stated its support for the proposed regulations. However, the commenter suggested clarifying the definition of "branch office" to explicitly exempt an employee's place of residence so long as specific operational and security criteria are met. The commenter stated that a plain reading of this definition indicates that California debt collection workers would not be able to work remotely from home without a branch office license and licensees would be required to apply for a branch office license for each home location of the licensee's employees. The commenter has found that having call center employees work remotely provides benefits to call center employees and consumers and appears to be good business. The commenter provided as examples the state of Maryland's rule allowing a licensee's employees to work from home and related guidance from the American Financial Services Association.

Response: The Department agrees with the request to clarify the definition of "branch office." The Department has revised the definition in the second 15-day modified text published on November 15, 2021, to clarify the conduct or activities that constitute a branch office for purposes of registering a location as a branch office with the Department through NMLS.

Commenter No. 7: Thomas Leonard, Executive Director, California Financial Service Providers Association

Comment No. 7.1: The commenter requested additional guidance because the definitions in Financial Code section 100002, subdivision (e) through (h) and (j), of the Debt Collection Licensing Act are not sufficiently clear or detailed to reflect the full reality of consumer credit and payment transactions. Specifically, the commenter requested guidance on whether the acceptance of a check or electronic payment by a commercial entity in payment for goods or services constitutes extending credit to the consumer under the Debt Collection Licensing Act and whether the payment of rent by a check under a residential lease is considered a credit transaction for purposes of the Act. The commenter does not believe this was the intent of the Act.

Response: The Department declines to make the requested changes because they concern statutory definitions in the Debt Collection Licensing Act and are not specifically directed at the proposed regulations.

[Government Code section 11346.9, subdivision (a)(3).] The proposed regulations adopt the license application, process for applying for a debt collection license, and other provisions relevant to licensing, including amendment, denial, and surrender of a license. However, the Department will consider the comments in evaluating the need for future rulemaking.

Comment No. 7.2: The commenter asked whether a (permitted) check casher's efforts to collect the proceeds paid to a consumer who has received cash or other payment in a check cashing transaction, where the check has bounced, constitutes extending credit to the consumer within the meaning of the Debt Collection Licensing Act. The commenter does not believe this was the intent of the Act and requested the regulations to state this.

Response: The Department declines to make the requested change because it is not specifically directed at the proposed regulations and therefore outside the scope of the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).] The proposed regulations adopt the license application, process for applying for a debt collection license, and other provisions relevant to licensing, including amendment, denial, and surrender of a license. However, the Department will consider the comments in evaluating the need for future rulemaking.

Comment No. 7.3: The commenter requested the Department to establish one or more de minimis exemptions. The commenter does not believe the Debt Collection Licensing Act was intended to require every single person or business entity who might seek to recover a delinquent obligation to obtain a license under the Act. The commenter stated that collection on returned payments is an everyday occurrence for a retailer, grocer, or other service provider and a de minimis threshold will greatly relieve the potential burden on California businesses from the current unclear definitional language of the Act and prevent the clogging of the Department's licensing and examination resources in implementing the Act.

Response: The Department declines to make the requested change because it is not specifically directed at the proposed regulations and therefore outside the scope of the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).] The proposed regulations adopt the license application, process for applying for a debt collection license, and other provisions relevant to licensing, including amendment, denial, and surrender of a license. However, the Department will consider the comments in evaluating the need for future rulemaking.

Comment No. 7.4: The commenter requested guidance with respect to the scope of the finance lender exemption in Financial Code section 100001, subdivision (b), in the following eight specific factual situations:

- A CFL licensee servicing loans it originated under its CFL license and holds. This seems clearly exempt.
- A CFL licensee servicing loans it purchased from another CFL licensee or another exempt entity such as a bank. This appears to be exempt but clarification is necessary since the conclusion is not obvious.

- A CFL licensee servicing loans for which it purchased servicing from another CFL license, or another exempt entity such as bank. This appears to be exempt but clarification is necessary since the conclusion in not obvious.
- A CFL licensee servicing loans it originated under a CFL license and sold to an SPV with ownership related to the CFL. This also appears to be exempt but clarification is necessary since the conclusion is not obvious.
- A CFL licensee servicing loans it originated under a CDDTL license and sold to an unrelated third party. This appears to be exempt but clarification is necessary since the conclusion is not obvious.
- A CFL licensee collecting on checks it cashed under a Check Casher's permit. This appears to be exempt but clarification is necessary since the conclusion is not obvious.
- A CFL licensee collecting on failed transactions it made under a Money Transmitter's license. This appears to be exempt but clarification is necessary since the conclusion is not obvious.
- A CFL licensee servicing obligations it purchased from a non-exempt entity such as a check casher or CDDTL licensee. This appears to be exempt but clarification is necessary since the conclusion is not obvious.

The commenter also urged the Department to research and consider adding additional provisions to the regulations to address uncertainty for other types of business entities.

Response: The Department declines to make the requested changes because they are not specifically directed at the proposed regulations and therefore outside the scope of the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).] The proposed regulations adopt the license application, process for applying for a debt collection license, and other provisions relevant to licensing, including amendment, denial, and surrender of a license. However, the Department will consider the comments in evaluating the need for future rulemaking.

Comment No. 7.5: The commenter stated that Section 1850(b) defines "applicant" as including any "affiliates" and Section 1850(a) includes any "affiliate" within the coverage of the regulation. The commenter requested clarification of the definitions of "affiliate" and "applicant" in Section 1850(a) and (b) because as currently proposed, the regulation imposes a number of obligations that apply to the "applicant", which would mean that any of the applicant's affiliates would have to meet those obligations even if those applicants are not seeking licensure or are not required to be licensed under the Debt Collection Licensing Act.

Response: The Department agrees with the requested changes to the definitions of "affiliate" and "applicant". The Department did not intend the definitions to suggest that all the applicant's affiliates would be required to meet the requirements of an applicant. The Department has decided to amend the definitions of "affiliate" and "applicant" in Section 1850(a) and (b) to provide that an affiliate who is not applying for a license is not an applicant for purposes of licensure under the Debt Collection Licensing Act.

Comment No. 7.6: The commenter asked how the requirement in Section 1850.7(a)(1)(B) to obtain the Department's approval before using a fictitious business name will be applied to entities that are currently

using fictitious business names and whether they will be grandfathered automatically by filing an application. The commenter suggested that the application require the listing of all fictitious business names currently being used by the applicant, with a provision that such names may continue to be used until 60 days after the applicant is notified by the Department that a name is disapproved for further use.

Response: The Department declines to make the suggested change because while the Department generally agrees with permitting applicants who are currently using fictitious business names to continue to use any name disapproved by the Department for up to 60 days after being notified of disapproval, the Department will address specific situations on a case-by-case basis to allow for flexibility in issuing licenses. Section 1850.7(a)(1) requires applicants to provide on the Form MU1 all fictitious business names currently being used by the applicant.

Comment No. 7.7: The commenter requested clarification of the "the total dollar amount of debt collected from consumers as of the prior calendar year-end" in Section 1850.7(a)(15). The commenter asked whether this includes only third-party collections or amounts collected in connection with non-exempt financial services such as money transmission or check cashing, proceeds from non-exempt lending activities such as pawn or deferred deposit lending, or collection of returned payments by non-financial service providers, or from exempt activities such as banking, finance lending, or bad check collections.

Response: The Department declines to make the requested change because after evaluating this comment and other similar comments, the Department has decided to delete the requirement from Section 1850.7(a)(15). The Department determined that requiring applicants to provide information on total debt collected in the license application is unnecessary for purposes of issuing licenses and premature because further study of the need for higher surety bond amounts is required before proposing regulations. However, the Department will consider the comments if the Department decides to go forward with future rulemaking on this subject.

Comment No. 7.8: The commenter stated that the NMLS system was designed to process mortgage loan originator applications and therefore is often inapposite to the acceptance and processing of other types of license applications. The commenter requested additional guidance on the following information requirements in the license application:

- The description of business activities and additional activities engaged in by the applicant;
- The organization chart, especially the requirement pertaining to the identification of affiliates of the applicants engaged in the business of debt collection, other financial or settlement services, and specific guidance on what this should look like and whether it should include other licensed activities such as money transmission, check cashing, pawnbroker lending, or deferred deposit lending;
- The management chart; and
- The requirement for written policies and procedures for compliance with the specified debt collection laws.

The commenter stated that while these requirements are all inherently reasonable, more specific guidance will minimize chances that the Department will find an application to be deficient.

Response: The Department declines to make the requested changes because they are unnecessary. The business activities are described in NMLS' Policy Guidebook under "Business Activities Definitions" and provided to help applicants determine the appropriate license based on their activities. As indicated on Forms MU1, MU2, and MU3, which are incorporated by reference, the Department has determined that a debt collection license includes the following business activities: active debt buying, first party debt collection, third party debt collection, first mortgage servicing (only for collections for first mortgages the company holds/owns), third party first mortgage servicing (only for collections for first mortgages the company does not hold/own), third party subordinate lien mortgage servicing (only for collections for subordinate lien mortgage the company does not hold/own), judgment recovery and other debt. With respect to the organization chart, the proposed regulations require applicants to provide the names of any affiliates engaged in the business of other financial services or settlement services. This includes affiliates licensed under other financial services laws if they are engaged in these activities. Applicants must provide a management chart that identifies the individuals who hold the titles specified in Section 1850.7(a)(9). The Department has decided to delete the requirement in Section 1850.7(a)(9) to identify the applicant's compliance reporting and internal audit structure in the management chart and the requirement in Section 1850.7(a)(13) to provide policies and procedures after determining the information is unnecessary for purposes of issuing licenses. However, the Department can require licensees to provide the information pursuant to the Department's examination and investigative authority in Financial Code section 100004 to ascertain compliance with the provisions of the Debt Collection Licensing Act, including the requirement in Financial Code section 100019, subdivision (a), to develop procedures and policies reasonably intended to promote compliance with Act.

Commenter No. 7.9: The commenter requested Sections 1850.7(c) and 1850.61(b) be revised to require the Department to inform an applicant whose license application or licensee whose application to surrender a license is denied as to all the reasons for the denial.

Response: The Department declines to make the requested changes because they are unnecessary. The Department's practice is to provide all the grounds supporting the denial of an applicant's license application or a licensee's license surrender.

<u>Commenter No. 8: Edward D'Alessio, Executive Director, INFin</u>

Comment No. 8: The comments are the same as the comments summarized in Comment Nos. 7.1 through 7.9 above.

Response: See the Department's responses to Comment Nos. 7.1 to 7.9 above.

<u>Commenter No. 9: Cindy Yaklin, President, California Association of Collectors</u>

Comment No. 9.1: The commenter asked whether the Department considers the home of an employee of a debt collector who works from home as a branch office and whether a debt collector will be required to file a Form MU3 for each employee who works from home. The commenter stated that many employers are for a variety of reasons considering having at least a portion of their workforce continue to work from home.

Response: The Department has revised the definition of "branch office" in the second 15-day modified text published on November 15, 2021, to clarify to clarify the conduct or activities that constitute a branch office for purposes of registering a location as a branch office with the Department through NMLS.

Comment No. 9.1.1: The commenter requested confirmation that branch offices will not be required to obtain a separate license because Financial Code section 100001, subdivision (a), of Debt Collection Licensing Act provides that a separate license shall not be required for each branch office.

Response: The proposed regulations do not require branch offices to be separately licensed. Section 1850.7(a)(16), however, requires branch offices to be registered with the Department through NMLS. The Department has authority to require the registration of branch offices under its general rulemaking authority in Financial Code section 100003 of the Debt Collection Licensing Act. The Department's authority to prescribe the form of and to receive applications for licenses and to require information concerning applicants that the Commissioner deems necessary with regard to public interest and consumer protection is without limitation. The Department has determined that requiring license applicants to provide information on their branch offices and branch managers is necessary for purposes of determining whether an applicant is eligible for a license pursuant to Financial Code section 100004, subdivision (a).

The Department also has authority under Financial Code section 100006.3 to require applicants to make all filings with Commissioner through NMLS. The Department has decided that NMLS is the most cost-effective and efficient way to maintain all information on applicants and avoids the need to have a separate system to maintain branch information. The Department has also determined that there is no other feasible or cost-effective option to branch office registration currently available that would allow the Department to receive and maintain information on branch offices and branch managers on NMLS. However, the Department remains open to further discussions with NMLS on developing other processes for receiving and maintaining branch information that do not require Form MU3 filings.

Comment No. 9.2: The commenter requested the requirement to appoint the Commissioner as agent for service of process be deleted from Section 1850.7(a)(2) because it is contrary to the legislative intent of Senate Bill 908. The commenter stated that the parties specifically agreed during negotiations of Senate Bill 908 and at the commenter's request to eliminate this same provision from the legislative bill.

Response: The Department declines to make the requested change because the Department has authority to require applicants to appoint the Commissioner as agent for service of process under its general rulemaking authority in Financial Code section 100003 of the Debt Collection Licensing Act. The Department's authority to prescribe the form of and to receive applications for licenses; to investigate and act upon a complaint made in

connection with a licensee; and to subpoena documents and to require the production of books, papers, or other materials relevant to any inquiry is without limitation. Financial Code section 100005 authorizes the Department to issue and serve orders on persons or licensees for violating the Act. The requirement to appoint the Commissioner as agent for service of process is part of the license application. Requiring applicants to appoint the Commissioner as agent for service of process is necessary for the Department to be able to fulfill its responsibility to enforce the Debt Collection Licensing Act by enabling it to serve the Commissioner in actions against licensees who attempt to evade service.

The Department disagrees that the requirement is contrary to the legislative intent of Senate Bill 908, which enacted the Debt Collection Licensing Act. The legislative history indicates the author removed the provision from Senate Bill 908 in the second draft of the bill in April 2020, two months after the bill was introduced but before the first bill analysis by the Senate Committee on Banking and Financial Institutions. There is no evidence in the legislative history that the provision was considered and removed after committee debate on the provision's merits, which strongly suggests the author's removal of the provision is not indicative of any legislative intent. The author's unilateral decision to withdraw the provision from Senate Bill 908 may have been for reasons such as to reduce opposition to the bill and the author's understanding that the Department could impose the requirement by regulation under its general rulemaking authority in Financial Code section 100003 as it did under the California Residential Mortgage Lending Act, the California Financing Law, the California Deferred Deposit Transaction Law, and the Financial Institutions Law.

Comment No. 9.3: The commented requested the requirement in Section 1850.7(a)(6)(A) for certain individuals to provide their passport number be removed because individuals should not be required to obtain a passport to comply with Senate Bill 908.

Response: The Department agrees with the requested change and has decided to delete the requirement from Section 1850.7(a)(6)(A). Requiring both government-issued identification and passport identification is duplicative and unnecessary for purposes of verifying the identity of individuals. The Department notes for clarification purposes that Section 1850.7(a)(6)(A) did not require individuals to obtain a passport. The section would have required individuals who had a passport to provide their passport information.

Comment No. 9.4: The commenter stated that the requirement in Section 1850.7(a)(10)(D) for applicants to provide the names of all their vendors is excessive and should be limited to current vendors who have contact with an applicant's consumers.

Response: The Department agrees with the requested change and has decided to delete the requirement from Section 1850.7(a)(10)(D). The Department determined that requiring this information in the license application is unnecessary for purposes of issuing licenses. However, the Department may later determine the information is necessary for purposes of determining whether licensees are complying with the provisions of the Debt Collection Licensing Act and can require licensees to provide the information pursuant to the Department's examination and investigative authority in Financial Code section 100004.

Comment No. 9.5: The commenter stated that the amount of debt collected from consumers in the first bullet point in Section 1850.7(a)(15) should be limited to the amount of debt collected from California consumers and not all consumers nationwide.

Response: The Department declines to make the requested change because the Department has decided to delete the requirement in the first bullet from Section 1850.7(a)(15), which would have required applicants to provide the total dollar amount of debt collected from consumers in the prior calendar year. The Department determined that requiring applicants to provide this information in the license application is unnecessary for purposes of issuing licenses and premature because further study of the need for higher surety bond amounts is required before proposing regulations. However, the Department will consider the comment if the Department decides to go forward with future rulemaking on this subject.

Comment No. 9.6: The commenter requested the Commissioner to confirm that a debt collector will not be required to obtain a separate license for each branch location. The commenter stated that Section 1850.7(a)(16) requires debt collectors to register each branch office by filing with the Commissioner a Form MU3 for each branch office.

Response: See the Department's response to the same comment made by the commenter in Comment No. 9.1.1 above.

Comment No. 9.7: The commenter stated the 10-calendar day requirement to file amendments to license applications in Section 1850.7(d) is contrary to the 30-day requirement in Financial Code section 100018, subdivision (a), of the Debt Collection Licensing Act.

Response: The Department declines to make the requested change because the 10-calendar day requirement only applies to amendments to license applications that are pending with Department, i.e., a license has not yet been approved. The requirement to file amendments to pending applications within 10 calendar days of the change is necessary to prevent unnecessary work in approving licenses and ensure that the Department's approval of licenses is based on current and correct information. Amendments to information in license applications that occur after a license has been issued must be filed within 30 calendar days of the change in accordance with Section 100018, subdivision (a), of the Financial Code and Section 1850.30 of the proposed regulations.

Comment No. 9.8: The commenter requested the requirement to appoint the Commissioner as agent for service of process in Section 1850.8 be deleted because it is inconsistent with the legislative intent of Senate Bill 908 and unnecessarily duplicative since California law already requires entities to appoint an agent for service process. The commenter stated that this appointment will impose significant potential liability on the Department.

Response: The Department declines to make the requested change because the Department has authority to require applicants to appoint the Commissioner as agent for service of process under its general rulemaking

authority in Financial Code section 100003 of the Debt Collection Licensing Act. See the Department's response to a similar comment made by the commenter in Comment No. 9.2 above. The Department disagrees that the requirement is duplicative and would impose significant potential liability on the Department. The requirement is not duplicative because the appointments serve different purposes and are required under different authority. California law requires businesses to appoint a registered agent as a point of contact for serving legal process on the business. Requiring applicants to appoint the Commissioner as agent for service of process is necessary to allow the Department to serve the Commissioner in actions against licensees who attempt to evade service. Other persons may choose to serve the Commissioner instead of the licensee's registered agent. However, service on the Commissioner is limited to noncriminal matters. The Department disagrees that appointment of the Commissioner as agent for service of process will impose significant liability on the Department because the Department has no obligation or requirement to forward the notice of service or the legal process to the licensee. Section 1850.8(d) requires the party making service on the Commissioner to send notice of the service and a copy of the process by registered or certified mail to the licensee at its last address on file with the Commissioner. Licensees under other laws administered by the Department, including the California Residential Mortgage Lending Act, the California Financing Law, the California Deferred Deposit Transaction Law, and the Financial Institutions Law, are required to appoint the Commissioner as agent for service of process and the Department has not incurred any liability from it.

Comment No. 9.9: The commenter stated that the requirement to provide investigative background reports on foreign individuals is not referenced in Senate Bill 908 and the information and documents required for the investigative background reports are unnecessary and/or excessive and should be more consistent with the requirements for United States residents.

Response: The Department has unlimited authority under Financial Code section 100003 to require information on individuals for purposes of investigating and ascertaining the honesty, truthfulness, integrity, and competency of the individual, and to prescribe the form of the license application. The Department has determined that the requirement to provide investigative background reports on individuals who are not residents of the United States is the most cost-effective method of obtaining information on the individual's history in another country. The Department agrees with the comment that some of the information being required is unnecessary, excessive, or inconsistent and has decided to delete the requirement to provide education records from Section 1850.10(b)(4) and information from social media from Section 1850(b)(6).

Comment No. 9.10: The commenter requested Section 1850.50(d) and (e) be clarified to provide that information on the amount of debt collected from consumers is limited to California consumers when deciding whether to increase the amount of a licensee's surety bond. The commenter stated that the Debt Collection Licensing Act focuses on the collection of "California consumer accounts" and therefore debt collected from consumers in other states is irrelevant.

Response: The Department declines to make the requested change because the Department has decided to delete subsections (d) and (e) of Section 1850, which would have required applicants to provide the total dollar amount of debt collected from consumers in the prior calendar year. The Department determined that

requiring applicants to provide this information in the license application is unnecessary for purposes of issuing licenses and premature because further study of the need for higher surety bond amounts is required before proposing regulations. However, the Department will consider the comment if the Department decides to go forward with future rulemaking on this subject.

Comment No. 9.11: The commenter requested the following language be added to the proposed regulations under new Section 1850.50(h) to be consistent with Senate Bill 908: "When the Commissioner requests a new bond, a licensee may provide the commissioner a refundable deposit in the amount of twenty-five thousand dollars ($25,000) in lieu of the bond while the licensee pursues a new bond."

Response: The Department declines to make the requested change because the Department has decided to delete the provisions concerning higher surety bond amounts in Section 1850.50(d) and (e) as discussed in the response to Comment No. 9.10 above. However, the Department will consider the comment if the Department decides to go forward with future rulemaking on this subject.

Comment No. 9.12: The commenter stated that the proposed regulations do not refer to the Debt Collection Advisory Committee and should be revised to note the existence and role of the Committee by adding the following language under new Section 1850.70: "The Commissioner will establish a Debt Collection Advisory Committee to advise the Commissioner on matters relating to debt collection or the debt collection business, including proposed fee schedules and the mechanics and feasibility of implementing requirements proposed in regulations." The commenter asked whether the Committee will be permitted to advise the Commissioner regarding these proposed regulations prior to their adoption.

Response: The Department declines to make the requested change because it is not specifically directed at the proposed regulations and therefore outside the scope of the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).] The Department notes that the proposed language may not comply with the nonduplication standard in Government Code section 11349.1 of the Administrative Procedure Act because it duplicates the language in Financial Code section 100025, subdivision (b), of the Debt Collection Licensing Act. The Commissioner has decided not to request advice from the Committee on these proposed regulations because of time constraints in establishing the license application and licensing process before January 1, 2022. However, the Department intends to involve the Committee in future rulemaking.

<u>Commenter No. 10: David C. Knight, Executive Director, California Financial Services Association</u>

Comment No. 10.1: The commenter stated that the requirement in Section 1850.7(a)(9) to identify the applicant's compliance reporting and internal audit structure is vague with respect to what the Department expects and the extent/parameters of the "audit". The commenter asked what exactly the applicant should be auditing and whether the Department is looking to collections or other areas in the audit such as underwriting, credit reporting, etc. The commenter stated that more specificity would benefit the Department and the applicant by eliminating the need to return applications for insufficient information

Response: The Department agrees with this comment and has decided to delete the requirement to identify compliance reporting and internal audit structure from the management chart because the information is unnecessary for purposes of issuing licenses. However, the Department can require licensees to provide information on their compliance programs as necessary pursuant to the Department's examination and investigative authority in Financial Code section 100004 to ascertain compliance with the provisions of the Debt Collection Licensing Act.

Comment No. 10.2: The commenter stated that the bonding provisions in Section 1850.50(d) provide that the Commissioner may arbitrarily and unreasonably require a higher minimum surety bond amount for an applicant based on the total dollar amount of consumer debt collected without regard to the amount collected by the applicant in relationship to collections by all collectors. The commenter recommended that the Department establish the bonding at $25,000 for everyone until the Department collects the historical information necessary to establish a high to low scale of the amount collected by California collectors and accurately establishes reasonable tiers for the bonding requirements based on the historical data, and then propose regulations to adopt those tiers.

Response: The Department agrees with the recommended changes and has decided to delete Section 1850.50(d). Subsection (d) was intended to make licensees aware that the Department may later require higher bonding requirements and not to arbitrarily require applicants to provide higher bond amounts. The Department intended to collect information from license applications and annual reports of licensees to determine whether higher surety bond amounts are needed and if so, what the appropriate bond amounts should be and until that time, the Department set the required surety bond amount at $25,000 for every applicant as provided in subsection (c). The Department decided to delete subsection (d) and related subsection (e) of Section 1850.50 because they are unnecessary for purposes of issuing licenses and further study of the need for higher bonding requirements is necessary before proposing regulations. However, the Department will consider the comments if the Department decides to go forward with future rulemaking on this subject.

<u>Commenter No. 11: Max Behlke, Director, State Government Relations, Electronic Transactions Association</u>

Comment No. 11: The commenter requested the Department to clarify in the proposed regulations that the following individuals and entities do not need to obtain a license under the Debt Collection Licensing Act: 1) an officer or employee of the creditor, that in the name of the creditor, collects debt for the creditor; 2) loan servicers that collect or attempt to collect any debt owed or due or asserted to be owed or due to another to the extent that such activity concerns a debt which was not in default at the time it was obtained by such person, or whose collection activities are confined to and directly related to the operation of a business other than a collection agency; 3) entities that purchase debt from a bank or licensee that was not past due at the time of purchase and collect in a first party capacity; and 3) subsidiaries and affiliates of depository institutions under the depository institution exemption in Financial Code section 100001, subdivision (b)(1), of the Debt Collection Licensing Act.

Response: The Department declines to make the requested changes because they are not specifically directed at the proposed regulations and therefore outside the scope of the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).] The proposed regulations adopt the license application, process for applying for a debt collection license, and other provisions relevant to licensing, including amendment, denial, and surrender of a license. However, the Department will consider the comments in evaluating the need for future rulemaking.

Commenter No. 12: Tamar Yudenfreund, Senior Director, Public Policy, Encore Capital Group, Inc. and subsidiaries, including Midland Credit Management, Inc.

Comment No. 12.1: The commenter asked that the definition of "branch office" in Section 1850(c) be clarified to exclude employees working from home. The commenter stated that employees working from home bear no logical resemblance to the traditional definition of a business' "branch office" and requiring licensees to list employee home locations would not only be a huge administrative burden to debt collection companies with hundreds or even thousands of employees, but it would also create privacy concerns for employees whose private residential addresses would be disclosed during the licensing process.

Response: The Department agrees with the request to clarify the definition of "branch office." The Department has revised the definition in the second 15-day modified text published on November 15, 2021, to clarify the conduct or activities that constitute a branch office for purposes of registering a location as a branch office with the Department through NMLS.

Comment No. 12.2: The commenter asked that the requirement in Section 1850.7(a)(6) to identify the individuals responsible for the conduct of the applicant's debt collection activities in this state be removed because the language is vague and potentially broad and could require the reporting of hundreds of employees who communicate with California consumers. The commenter stated that information about applicants, principal officers, general partners, trustees, and directors is comprehensive enough to provide the Department with thorough information about the people responsible for running the company and the debt collection activities.

Response: The Department declines to make the requested change because the Department has determined the change is unnecessary. The language is intended to capture individuals who are responsible for running the business and the debt collection activities under a title not already included in the other categories specified in Section 1850.7(a)(6). Whether any other individuals will need to be identified in the license application as "responsible for the conduct of the applicant's debt collection activities in this state" will depend on each applicant's unique business structure. The category, however, is not intended to require applicants to report every collection professional who communicates with California consumers. The Department's regulatory interest is in the individuals who are responsible for overseeing the debt collection business, collection activities, or major control functions of the business, which typically include the applicant, principal officers, directors, managing members, general partners, trustees, and owners.

Comment No. 12.3: The commenter stated that the requirement to register branch offices in Section 1850.7(a)(16) should not be included because it is burdensome for companies that have multiple branch locations and inconsistent with Senate Bill 908, which provides that a separate license is not required for each individual branch office. The commenter also stated that separate branch office registration appears to be essentially the same as separate branch office licensing.

Response: The Department declines to make the requested change because the Department has authority to require the registration of branch offices under its general rulemaking authority in Financial Code section 100003 of the Debt Collection Licensing Act. The Department's authority to prescribe the form of and to receive applications for licenses and to require information concerning applicants that the Commissioner deems necessary with regard to public interest and consumer protection is without limitation. The Department has determined that requiring license applicants to provide information on their branch offices and branch managers is necessary for purposes of determining whether an applicant is eligible for a license pursuant to Financial Code section 100004, subdivision (a).

The Department also has authority under Financial Code section 100006.3 to require applicants to make all filings with Commissioner through NMLS. The Department has decided that NMLS is the most cost-effective and efficient way to maintain all information on applicants and avoids the need to have a separate system to maintain branch information. The Department determined that there is no other feasible or cost-effective option to branch office registration currently available that would allow the Department to receive and maintain information on branch offices and branch managers on NMLS. The Department understands that this will impose more upfront work for applicants with multiple branch offices because they will need to file a Form MU3 for each one. However, they will also benefit from NMLS filing because they will be able to update the information as needed such as changes to branch managers without having to send updates to the Department through the mail. The Department, however, remains open to further discussions with NMLS on developing other processes for receiving and maintaining branch information that do not require Form MU3 filings.

The Department disagrees that branch office registration is inconsistent with Senate Bill 908 or the same as separate branch office licensing. Financial Code section 100001, subdivision (a), of the Debt Collection Licensing Act provides that a separate license is not required for each individual branch office. Section 1850.7(a)(16) requires branch offices to be registered and not licensed. Nothing in the Debt Collection Licensing Act prohibits the Department from requiring registration of branch offices. Registration and licensure are not the same. Unlike a license, there are no eligibility requirements or Department approval required to register a branch office.

Comment No. 12.4: The commenter stated the requirement in Section 1850.8 to appoint the Commissioner as agent for service of process should be deleted for the following reasons: it makes little practical sense, no other state requires a similar provision, it is inconsistent with Senate Bill 908, and it would place the Department in a massive administrative role and subject the agency to liability for no reason. The commenter stated that the provision was in the initial version of the bill introduced on February 3, 2020, and deleted from

all subsequent versions of Senate Bill 908 and therefore it would be inappropriate to add back language that had been removed during the legislative process.

Response: The Department declines to make the requested change because the Department has authority to require applicants to appoint the Commissioner as agent for service of process under its general rulemaking authority in Financial Code section 100003 of the Debt Collection Licensing Act. The Department's authority to prescribe the form of and to receive applications for licenses; to investigate and act upon a complaint made in connection with a licensee; and to subpoena documents and to require the production of books, papers, or other materials relevant to any inquiry is without limitation. Financial Code section 100005 authorizes the Department to issue and serve orders on persons or licensees for violating the Act. The requirement to appoint the Commissioner as agent for service of process is part of the license application. Requiring applicants to appoint the Commissioner as agent for service of process is necessary for the Department to be able to fulfill its responsibility to enforce the Debt Collection Licensing Act by enabling it to serve the Commissioner in actions against licensees who attempt to evade service.

The Department disagrees that the requirement is contrary to the legislative intent of Senate Bill 908, which enacted the Debt Collection Licensing Act. The legislative history indicates the author removed the provision from Senate Bill 908 in the second draft of the bill in April 2020, two months after the bill was introduced but before the first bill analysis by the Senate Committee on Banking and Financial Institutions. There is no evidence in the legislative history that the provision was considered and removed after committee debate on the provision's merits, which strongly suggests the author's removal of the provision is not indicative of any legislative intent. The author's unilateral decision to withdraw the provision from Senate Bill 908 may have been for reasons such as to reduce opposition to the bill and the author's understanding that the Department could impose the requirement by regulation under its general rulemaking authority in Financial Code section 100003 as it did under the California Residential Mortgage Lending Act, the California Financing, the California Deferred Deposit Transaction Law, and the Financial Institutions Law.

The Department disagrees that the requirement is impractical and places the Department in a massive administrative role and subject to liability. While other persons may choose to serve the Commissioner instead of the licensee's registered agent, service on the Commissioner is limited to noncriminal matters. Appointment of the Commissioner as agent for service of process will not impose any liability on the Department because the Department has no obligation or requirement to forward the notice of service or the legal process to the licensee. Section 1850.8(d) requires the party making service on the Commissioner to send notice of the service and a copy of the process by registered or certified mail to the licensee at its last address on file with the Commissioner. Whether other states require a similar provision is irrelevant to consumer protection in California.

Comment No. 12.5: The commenter asked that the requirement in Section 1850.10(a)(4) that investigative background reports of individuals must be in English be clarified to allow the reports to be translated to English if in another language.

Response: The Department agrees with the requested change and has decided to revise the requirement in Section 1850.10(a)(4) to permit translated reports and to require a translator's certificate. The translator's certificate is necessary to ensure the translation is accurate and complete.

Comment No. 12.6: The commenter asked that the requirement in Section 1850.10(b)(7) that investigative background reports of individuals must include regulatory history be removed or clarified that the information is required only if available. The commenter stated that regulatory history of individuals may not be available in some countries.

Response: The Department declines to make the requested change because an individual's regulatory history, particularly involving fraudulent activities and violations of debt collection laws, is essential in determining whether the individual would pose harm to California consumers. The investigative background report should state whether there is any regulatory history on the individual and if so, the information must be included in the individual's report.

Comment No. 12.7: The commenter asked that the requirement in Section 1850.10(b)(1) that investigative background reports must include credit reporting information be removed or clarified that a credit report is required only if available. The commenter stated that credit reports for individuals may not be available in some countries.

Response: The Department agrees with the requested change and has decided to revise Section 1850.10(b)(1) to require an actual credit report for the individual only if available.

Comment No. 12.8: The commenter stated that the requirement in Section 1850.30(a) to notify the Department upon "any change in its policies and procedures" is overly broad and burdensome to licensees because it would capture significant non-substantive policy and procedure changes. The commenter stated they routinely review and update their many policies and procedures and often the updates contain non-substantive changes and topics unrelated to licensing.

Response: The Department agrees with the comment and has decided to delete the requirement in Section 1850.30(a) to file changes to policies and policies with the Department.

Comment No. 12.9: The commenter asked for clarification on whether licensees in Section 1850.30(d) must notify only NMLS or NMLS and the Commissioner when changing its principal place of business.

Response: The Department agrees with the requested change and has decided to revise Section 1850.30(d) to clarify that notice must be provided to the Commissioner through NMLS. Licensees should not send the notice directly to the Commissioner.

<u>Commenter No. 13: Jan Stieger, Executive Director, Receivables Management Association International</u>

Comment No. 13.1: The commenter stated that the registered agent and Commissioner as agent for service of process requirements in Section 1850.7(a)(2) should be deleted because there is no statutory language that supports including them and they are opposite of the legislative intent of the Debt Collection Licensing Act.

Response: The Department declines to make the requested change because the Department has authority to require applicants to appoint the Commissioner as agent for service of process under its general rulemaking authority in Financial Code section 100003 of the Debt Collection Licensing Act. The Department's authority to prescribe the form of and to receive applications for licenses; to investigate and act upon a complaint made in connection with a licensee; and to subpoena documents and to require the production of books, papers, or other materials relevant to any inquiry is without limitation. Financial Code section 100005 authorizes the Department to issue and serve orders on persons or licensees for violating the Act. The requirement to appoint the Commissioner as agent for service of process is part of the license application. Requiring applicants to appoint the Commissioner as agent for service of process is necessary for the Department to be able to fulfill its responsibility to enforce the Debt Collection Licensing Act by enabling it to serve the Commissioner in actions against licensees who attempt to evade service.

The Department disagrees that the requirement is contrary to the legislative intent of Senate Bill 908, which enacted the Debt Collection Licensing Act. The legislative history indicates the author removed the provision from Senate Bill 908 in the second draft of the bill in April 2020, two months after the bill was introduced but before the first bill analysis by the Senate Committee on Banking and Financial Institutions. There is no evidence in the legislative history that the provision was considered and removed after committee debate on the provision's merits, which strongly suggests the author's removal of the provision is not indicative of any legislative intent. The author's unilateral decision to withdraw the provision from Senate Bill 908 may have been for reasons such as to reduce opposition to the bill and the author's understanding that the Department could impose the requirement by regulation under its general rulemaking authority in Financial Code section 100003 as it did under the California Residential Mortgage Lending Act, the California Financing, the California Deferred Deposit Transaction Law, and the Financial Institutions Law.

With respect to the registered agent requirement, California law requires entities to appoint an agent for service of process. The Debt Collection Licensing Act does not preempt California law from requiring debt collectors to appoint a registered agent.

Comment No. 13.2: The commenter recommended deleting the requirement in Section 1850.7(a)(6)(A) for certain individuals to provide a passport number because there is no purpose in requiring individuals who do not plan on traveling internationally to obtain a passport to satisfy this requirement.

Response: The Department agrees with the recommended change and has decided to delete the requirement from Section 1850.7(a)(6)(A). Requiring both government-issued identification and passport identification is unnecessary for verifying the identity of individuals. The Department notes for clarification purposes that Section 1850.7(a)(6)(A) did not require individuals to obtain a passport. The section would have required individuals who had a passport to provide their passport information.

Comment No. 13.3: The commenter recommended clarifying that the requirement in Section 1850.7(a)(10)(D) to provide information on the applicant's vendors applies to current business relationships only. The commenter stated the regulation is overly and unnecessarily broad and the Department can obtain the information it is looking for if it simply asks for the vendors performing collection activities that require interacting with consumers.

Response: The Department agrees with the requested change and has decided to delete the requirement from Section 1850.7(a)(10)(D). Requiring this information to be provided in the license application is unnecessary for purposes of issuing licenses. However, the Department can require licensees to provide the information as necessary pursuant to the Department's examination and investigative authority in Financial Code section 100004 to ascertain compliance with the provisions of the Debt Collection Licensing Act.

Comment No. 13.4: The commenter requested the Department to consider allowing RMAI Certified Businesses to submit their certification information in lieu of filing their policies and procedures required in Section 1850.7(a)(13). The commenter stated that this is a more efficient way of handling the requirement because certified businesses must maintain policies and procedures in accordance with RMAI standards. The commenter described its Receivables Management Certification Program and Code of Ethics as the "gold standard" within the receivables management industry due to the rigorous uniform industry standards of best practice that focus on protecting consumers, including among other things, a commitment to ongoing education, independent third-party audit, and compliance with consumer dispute standards. The commenter stated a review of the federal Consumer Financial Protection Bureau's Consumer Response portal shows that 97.97 percent of certified companies are either complaint-free or have maintained a statistical zero-percent complaint rate.

Response: The Department declines to make the requested changes because the Department has decided to delete the requirement in Section 1850(a)(13) for applicants to provide their policies and procedures in the license application. The Department determined that the information is unnecessary for the purpose of issuing licenses. However, the Department can require licenses to provide the information as necessary pursuant to the Department's authority to examine and investigate licensees for purposes of determining whether licensees are complying with the provisions of the Debt Collection Licensing Act, including the requirement in Financial Code section 100019, subdivision (a), to develop procedures and policies reasonably intended to promote compliance with Act.

Comment No. 13.5: The commenter recommended amending Section 1850.7(a)(13) to permit applicants to mark their policies and procedures as "Confidential." The commenter stated that applicants should not be required to disclose their corporate policies and procedures because they often contain proprietary non-public information, and the Department should prevent their public disclosure.

Response: The Department declines to make the recommended change because the Department has decided to delete the requirement in Section 1850.7(a)(13) for applicants to submit their policies and procedures in the license application as discussed above the response to Comment No. 13.4 above.

Comment No. 13.6: The commenter is concerned that "registration" of branch offices sounds like "licensure." The commenter stated that the legislative intent was not to create a separate stand-alone process for branch offices and that was the reason why the statute was very careful to not use the terms "license" or "register." The commenter also stated that to "register" each branch office on NMLS certainly feels a lot like getting a license for each one because each branch will have a license number with an expiration date, which will need to be renewed each year, and a separate fee will be required. The commenter recommended revising Section 1850.7(a)(16) to delete the requirement to register branch offices and to instead require applicants to include the address of any branch offices and the name of any branch managers in the application, prohibit an applicant from using a fictitious business name for a branch office, and require applicants to indicate each branch manager on the Form MU1. The commenter has the same concerns with the provisions concerning new branch office registrations and branch office location changes in related Section 1850.32.

Response: The Department declines to make the requested change. The Department has authority to require the registration of branch offices under its general rulemaking authority in Financial Code section 100003 of the Debt Collection Licensing Act. The Department's authority to prescribe the form of and to receive applications for licenses and to require information concerning applicants that the Commissioner deems necessary with regard to public interest and consumer protection is without limitation. The Department has determined that requiring license applicants to provide information on their branch offices and branch managers is necessary for purposes of determining whether an applicant is eligible for a license pursuant to Financial Code section 100004, subdivision (a).

The Department also has authority under Financial Code section 100006.3 to require applicants to make all filings with Commissioner through NMLS. The Department has decided that NMLS is the most cost-effective and efficient way to maintain all information on applicants and avoids the need to have a separate system to maintain branch information. The Department determined that there is no other feasible or cost-effective option to branch office registration currently available that would allow the Department to receive and maintain information on branch offices and branch managers on NMLS. The Department understands that this will impose more upfront work on applicants with multiple branch offices because they will need to file a Form MU3 for each branch. However, they will also benefit from NMLS filing because they will be able to update the information as needed such as changes to branch managers without having to send updates to the Department through the mail. The Department has considered the commenter's alternatives to branch registration to instead require applicants to include the address of the branch office and the name of any branch managers on the Form MU1. These alternatives are not as effective as requiring branch registration through NMLS because NMLS automatically requires individuals designated as branch managers to submit a Form MU2, which eliminates the need for the Department to follow up with individuals to obtain the information. This important feature would be lost under the commenter's alternative. The Department,

however, remains open to further discussions with NMLS on developing other processes for receiving and maintaining branch information that do not require Form MU3 filings.

The Department disagrees that branch office registration is inconsistent with Senate Bill 908 or the same as getting a license. Financial Code section 100001, subdivision (a), of the Debt Collection Licensing Act provides that a separate license is not required for each individual branch office. Section 1850.7(a)(16) requires branch offices to be registered and not licensed. Nothing in the Debt Collection Licensing Act prohibits the Department from requiring registration of branch offices. Registration and licensure are not the same. Unlike a license, there are no eligibility requirements or Department approval required to register a branch office. Licensees will incur an annual renewal fee from NMLS of $20 for each branch office registered on NMLS. However, this cost is less than the costs for the Department to develop and maintain a separate branch information system, which licensees would have to pay for through their annual assessments.

Comment No. 13.7: The commenter stated that the proposed regulations need to clarify that someone who is working from home does not constitute a "branch office."

Response: The Department agrees with the request to clarify the definition of "branch office." The Department has revised the definition in the second 15-day modified text published on November 15, 2021, to clarify the conduct or activities that constitute a branch office for purposes of registering a location as a branch office with the Department through NMLS.

Comment No. 13.8: The commenter requested the "total dollar amount of debt collected from consumers in the prior year" for purposes of determining the appropriate surety bond in Section 1850.7(a)(15) be based on the debt collected from California consumers. The commenter stated that this is consistent with the legislative intent and the total dollar amount collected nationally should not have any consequences on the amount a company needs to carry for a surety bond to protect California residents.

Response: The Department declines to make the requested change because the Department has decided to delete the requirement to provide the total dollar amount of debt collected after determining that requiring applicants to provide this information in the license application is unnecessary for purposes of issuing licenses and premature because further study of the need for higher surety bond amounts is required before proposing regulations. However, the Department will consider the comment if the Department decides to move forward with rulemaking in the future on this subject.

Comment No. 13.9: The commenter requested the requirement to file any amendment to the application within 10 calendar days be changed to 30 days to reflect the statutory requirement. The commenter stated that Section 100018, subdivision (a), of the Financial Code provides for 30 days to file changes in the information in the license application.

Response: The Department declines to make the requested change because the 10-calendar day requirement only applies to amendments to license applications that are pending with Department, i.e., a license has not

yet been approved. The requirement to file amendments to pending applications within 10 calendar days of the change is necessary to prevent unnecessary work in approving licenses and ensure that the Department's approval of licenses is based on correct information and avoid having to unnecessarily approve the license again. Amendments to information in license applications that occur after a license has been issued must be filed within 30 calendar days of the change in accordance with Section 100018, subdivision (a), of the Financial Code and Section 1850.30 of the proposed regulations.

Comment No. 13.10: The commenter stated that the requirement in Section 1850.8 to appoint the Commissioner as agent for service of process should be deleted because it is opposite of legislative intent, unnecessarily places the Department in a massive administrative role and subjects the agency to liability for no reason, and no other state requires a similar provision. The commenter stated that the initial version of Senate Bill 908, which was introduced on February 3, 2020, contained a proposed Section 90010 which authorized the irrevocable appointment of the Commissioner to "receive service of any lawful process in any noncriminal judicial or administrative proceeding." This language was deleted in the second version, which was introduced on April 15, 2020, and the language did not appear in any subsequent versions of the bill. The commenter stated that the same language in now used in the proposed rule. The commenter suggested that if the Commissioner wants to monitor litigation against licensees, the Commissioner could use a commercially available product such as Web Recon, which is used by the federal Consumer Financial Protection Bureau, to achieve the same purpose in a much more efficient and economical manner. The commenter also stated that the filing of suit against a business related to a strict liability statute, such as the FDCPA, TCPA, FCRA, California Rosenthal Act, or the California Fair Debt Buying Practices Act, in no way suggests any wrongdoing and asked what benefit is provided to the Department in the furtherance of their duties that cannot be achieved through a commercially available product such as Web Recon at far less expense.

Response: The Department declines to make the requested change because the Department has authority to require applicants to appoint the Commissioner as agent for service of process under its general rulemaking authority in Financial Code section 100003 of the Debt Collection Licensing Act. The Department's authority to prescribe the form of and to receive applications for licenses; to investigate and act upon a complaint made in connection with a licensee; and to subpoena documents and to require the production of books, papers, or other materials relevant to any inquiry is without limitation. Financial Code section 100005 authorizes the Department to issue and serve orders on persons or licensees for violating the Act. The requirement to appoint the Commissioner as agent for service of process is part of the license application. Requiring applicants to appoint the Commissioner as agent for service of process is necessary for the Department to be able to fulfill its responsibility to enforce the Debt Collection Licensing Act by enabling it to serve the Commissioner in actions against licensees who attempt to evade service. The alternative suggested by the commenter to use Web Recon or other commercially available products would not be effective because the purpose of the proposed requirement is to enable the Department to effect service on licensees who are trying to evade service and not to monitor litigation of licensees.

The Department disagrees that the requirement is contrary to the legislative intent of Senate Bill 908, which enacted the Debt Collection Licensing Act. The legislative history indicates the author removed the provision

from Senate Bill 908 in the second draft of the bill in April 2020, two months after the bill was introduced but before the first bill analysis by the Senate Committee on Banking and Financial Institutions. There is no evidence in the legislative history that the provision was considered and removed after committee debate on the provision's merits, which strongly suggests the author's removal of the provision is not indicative of any legislative intent. The author's unilateral decision to withdraw the provision from Senate Bill 908 may have been for reasons such as to reduce opposition to the bill and the author's understanding that the Department could impose the requirement by regulation under its general rulemaking authority in Financial Code section 100003 as it did under the California Residential Mortgage Lending Act, the California Financing, the California Deferred Deposit Transaction Law, and the Financial Institutions Law.

The Department disagrees that the requirement places the Department in a massive administrative role and subject to liability. While other persons may choose to serve the Commissioner instead of the licensee's registered agent, service on the Commissioner is limited to noncriminal matters. Appointment of the Commissioner as agent for service of process will not impose any liability on the Department because the Department has no obligation or requirement to forward the notice of service or the legal process to the licensee. Section 1850.8(d) requires the party making service on the Commissioner to send notice of the service and a copy of the process by registered or certified mail to the licensee at its last address on file with the Commissioner. Whether other states have or not have a similar requirement is not relevant to consumer protection in California.

Comment No. 13.11: The commenter stated that the investigative background reports of foreign applicants in Section 1850.10 is not referenced in the statutory language of the Debt Collection Licensing Act nor was it part of the extensive negotiations on the bill. The commenter suggested revising the requirements in Section 1850.10 to only require information that is directly relevant to the application and comparable to the information required of U.S. applicants. The commenter stated that some information being required such as education records has no bearing on licensure and other information such as credit reports may not be available in other countries.

Response: The Department has unlimited authority under Financial Code section 100003 to require information on individuals for purposes of investigating and ascertaining the honesty, truthfulness, integrity, and competency of the individual, and to prescribe the form of the license application. The Department has determined that the requirement to provide investigative background reports on individuals who are not residents of the United States is the most cost-effective method of obtaining information on the individual's history in another country. However, the Department agrees with the comments that some of the information being required is not relevant or comparable to the information required of individuals residing in the United States and has decided to delete the requirement to provide education records from Section 1850.10(b)(4) and information from social media from Section 1850(b)(6).

Comment No. 13.12: The commenter noted that Section 1850.30(a) is an incomplete sentence with missing content.

Response: The Department agrees with the comment and has decided to revise Section 1850.30(a) to specify that changes in the information in the license application should be filed with the Commissioner through NMLS.

Comment No. 13.13: The commenter stated the surety bond provisions in Section 1850.50 should be revised to clarify that a higher minimum amount will be based on collections from California consumers and add new language requiring the Commissioner to adopt by regulation a public schedule which details the thresholds and bond value of the higher amounts, clarify in subsection (e) that "debt collected by the licensee" means collections in California, and add a new section permitting licensees to provide a refundable deposit in the amount of $25,000 in lieu of the bond while the licensee pursues a new bond.

Response: The Department declines to make the requested changes because the Department has decided to delete subsections (d) and (e) of Section 1850. The Department determined that this information is unnecessary for purposes of issuing licenses and premature because further study of the need for higher surety bond amounts is required before proposing regulations. However, the Department will consider the comment if the Department decides to move forward with proposed regulations in the future on this subject.

Comment No. 13.14: The commenter requested the following language referencing the Debt Collection Advisory Committee and its role in the regulations be added in new Section 1850.70: "The Commissioner will establish a Debt Collection Advisory Committee to advise the commissioner on matters relating to debt collection or debt collection business, including proposed fee schedules and the mechanics and feasibility of implementing requirements proposed in regulations."

Response: The Department declines to make the requested change because it is not specifically directed at the proposed regulations and therefore outside the scope of the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).] The Department notes that the proposed language may not comply with the nonduplication standard in Government Code section 11349.1 of the Administrative Procedure Act because it duplicates the language in Financial Code section 100025, subdivision (b), of the Debt Collection Licensing Act.

Comment No. 13.15: The commenter stated its support of the following sections of the proposed regulations: Section 1850 (Definitions); Section 1850.6 (Electronic Filings); Section 1850.7 (License Application for Debt Collector, except for the comments as summarized above; Section 1850.9 (Fingerprints and Background Checks); Section 1850.11 (Notices Included with Application); Section 1850.12 (Challenge Process for Information Entered into NMLS); Section 1850.13 (Share Arrangements with Other Government Agencies); Section 1850.14 (Evidence of Financial Responsibility); Section 1850.15 (Denial of License Application); Section 1850.16 (Designated Email Address); Section 1850.30 (Notice of Changes), except for comment as summarized above; Section 1850.31 (Officers, Directors, Partners, and Other Persons: Maintenance of Current List with Commissioner: Information Required); Section 1850.50 (Surety Bond), except for the comments as summarized above; and Section 1850.60 (Effectiveness of License for Debt Collector).

Response: The Department appreciates the commenter's support.

Commenter No. 14: Mary Gandesbery, Pacific Gas and Electric Company; David A. Gomez, Southern California Edison; Ismael Bautista, Jr., Southern California Gas Company; and Paul A. Szymanski, San Diego Gas & Electric Company

Comment No. 14: The commenters requested the Commissioner to amend the proposed regulations to clarify that public utilities are not subject to the Debt Collection Licensing Act's licensing requirements when billing and collecting for their own utility services or for third-party on-bill financing programs approved by the California Public Utilities Commission. The commenters stated that the Senate Committee on Banking and Financial Institutions analysis of Senate Bill 908 makes clear that the Act's licensing requirements are not intended to apply to entities that only incidentally engage in collection activities. The utilities' billing activities are incidental to their core business of providing energy services to their customers. Because any activities that could be construed as meeting the Act's definition of debt collection are merely incidental to the utilities' core business and are subject to CPUC oversight, which would fulfil the Act's primary purpose of ensuring regulatory oversight, the commenters stated that the Commissioner should not interpret the Act and the Rosenthal Act as applying to public utilities' billing activities. The commenters also stated that PG&E's billing activities for the CCA Residential Program, which provides financing provided by a third party to qualified residential service customers, are not covered by the Act's definition of debt collection because PG&E has no role in the collection activities. Lastly, the commenters stated that the Commissioner has previously recognized in a Department release and legal opinion that licensing requirements under the California Financing Law are not applicable to public utilities when making certain loans because they are not "engaged in the business" of a finance lender. The commenters requested the Commissioner's prior analyses under the California Financing Law be extended to these circumstances.

Response: The Department declines to make the requested change because it is not specifically directed at the proposed regulations and therefore outside the scope of the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).] The proposed regulations adopt the license application, process for applying for a debt collection license, and other provisions relevant to licensing, including amendment, denial, and surrender of a license. However, the Department will consider the comment in evaluating the need for future rulemaking.

Commenter No. 15: Chris Stewart, Vice President, State Affairs, American Resort Development Association

Comment No. 15.1: The commenter requested the proposed regulations to clarify that collection of association assessments does not constitute a "consumer credit transaction" because association assessments are not considered "consumer credit transactions" under current law and they should not be construed as such under the Debt Collection Licensing Act. The commenter stated that the licensing requirements for owners' associations and managing entities providing services to those associations depend on whether association dues are consumer credit transactions because the Act only requires licensure where an entity is attempting to collect a debt arising from a "consumer credit transaction", which is defined in the Act as a transaction in which "property, services or money in acquired on credit." The commenter stated that whether

a debt is based on an "extension of credit" is a matter of judicial interpretation in California and the commenter provided several court decisions interpreting the Rosenthal Act that the commenter believes provides grounds to clarify the status of association assessments under the Debt Collection Licensing Act.

Response: The Department declines to make the requested change because it is not specifically directed at the proposed regulations and therefore outside the scope of the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).] The proposed regulations adopt the license application, process for applying for a debt collection license, and other provisions relevant to licensing, including amendment, denial, and surrender of a license. However, the Department will consider the comment in evaluating the need for future rulemaking.

Comment No. 15.2: The commenter asked that in the event the Department determines that association assessments are consumer credit transactions under the Debt Collection Licensing Act, the Department should provide additional clarification on how the Department will determine the need for a surety bond in excess of $25,000 and that it consider both the cost and availability of such bonds. The commenter stated there is no published guidance on how the Department will evaluate debt collection activity reports in determining the appropriate bond amount that should be posted by any licensee and this lack of certainty is particularly problematic for owners' associations which are limited in the manner they may fund the expense.

Response: The Department agrees with the requested change and has decided to delete subsections (d) and (e) of Section 1850.50 concerning higher bonding requirements. The Department determined that requiring applicants to provide this information in the license application is unnecessary for purposes of issuing licenses and premature because further study of the need for higher surety bond amounts is required before proposing regulations. The Department will consider the comments if the Department decides to move forward with proposed regulations on this subject in the future.

<u>Commenter No. 16: Stephen Taylor, Director of Policy and Assistant General Counsel, Surety & Fidelity Association of America</u>

Comment No. 16.1: The commenter has concerns with the provision in Section 1850.50(g) requiring a surety that issued a debt collector bond to provide notification to the Commissioner within 10 calendar days of any claim being filed against, or any amount being paid under, the bond pursuant to the Debt Collection Licensing Act. The commenter urged the Department to delete Section 1850.50(g) and subsection (2) of section 4 of the proposed surety bond form because requiring sureties to provide notice of any action imposes an unnecessary and costly burden for sureties and increases the cost of the bond for licensees. The commenter stated that only the Commissioner can act against or receive payment from a debt collector surety bond and therefore the Commissioner would have direct knowledge of any action against or payout from a bond and would not need notification of such action taken by the Commissioner from a surety.

Response: The Department declines to make the requested change. While the Department agrees that only the Commissioner can act against or receive payment from surety bond, the Department's intent in requiring

notification from the surety in Section 1850.50(g) is to confirm the surety's receipt of the Department's claim. The Debt Collection Licensing Act does not have any minimum capitalization or other financial requirements for debt collectors and in some cases, the surety bond may be only source of funds available to recover the costs of an action taken by the Department against a debt collector. Confirmation by sureties is necessary to ensure Department claims are being processed expeditiously and the Department will be able to quickly recover its costs and require licensees to immediately replace their surety bonds.

Comment No. 16.2: The commenter recommended amending Section 1850.50(d) to allow sureties to issue a rider on behalf of the licensee instead of providing a new bond at the higher amount. The commenter stated that the use of increase riders is a common and highly used industry practice for increasing the bond amount on existing bonds and the practice is supported by the NMLS electronic bonding system. If the surety declines to increase the bond, the licensee will need to secure a new bond at the full and higher amount from another surety to replace the existing bond.

Response: The Department declines to make the recommended change because the Department has decided to delete the Section 1850.50(d). The Department determined that the information is unnecessary for purposes of issuing licenses and further study of the need for higher bonding requirements is necessary before proposing regulations.

Commenter No. 17: Jeffrey A. Beaumont, Chair, Community Associations Institute's California Legislative Action Committee

Comment No. 17: The commenter requested the following language be added to Section 1850(h): "The term "debt collector" does not include a common interest development, community association manager, management company, community association attorney, or business collecting assessments for a common interest development, as defined by Civil Code Section 4100." The commenter also requested the term "in the ordinary course of business" as used in Section 1850(h) be defined to clarify that common interest development boards, community association attorneys, community association managers, and management companies are not engaged in the collection of a "consumer debt" in their "ordinary course of business." The commenter stated that common interest development assessments provide funding for municipal and community services to residents and the primary source of funding for operations is payment of assessments by the homeowners. Homeowners are not acquiring services from the association on the promise of future payments and therefore assessments do not meet the definition of "consumer debt" in the Debt Collection Licensing Act. The commenter also stated that a common interest development does not regularly engage in consumer debt collection and is not engaged in the "business" in the conventional sense because it does not seek to generate profits.

Response: The Department declines to make the recommended changes because they concern statutory definitions in the Debt Collection Licensing Act and are not specifically directed at the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).] The proposed regulations adopt the license application, process for applying for a debt collection license, and other provisions relevant to licensing,

including amendment, denial, and surrender of a license. However, the Department will consider the comment in evaluating the need for future rulemaking.

Commenter No. 18: Matthew Kownacki, Director, State Research and Policy, American Financial Services Association

Comment No. 18.1: The commenter stated that the proposed rulemaking should reinforce the exemption for financial institutions under the Debt Collection Licensing Act and clarify that the exemption will be interpreted broadly to these entities and their affiliates engaging in collections activities relevant to their existing licenses.

Response: The Department declines to make the recommended change because it is not specifically directed at the proposed regulations and therefore outside the scope of the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).] The proposed regulations adopt the license application, process for applying for a debt collection license, and other provisions relevant to licensing, including amendment, denial, and surrender of a license. However, the Department will consider the comment in evaluating the need for future rulemaking.

Comment No. 18.2: The commenter stated that the proposed regulations broadly define "affiliate" and based on the structure of such companies, the Department should consider "affiliate" exceptions for securitization entities and holding companies.

Response: The Department declines to make the recommended change because the definition of "affiliate" in Section 1850(a) is intended to clarify what is an affiliate for purposes of issuing a single license. Financial Code section 100003, subdivision (b)(2), allows affiliated companies to be licensed under a single license and requires the Commissioner to adopt regulations specifying what constitutes an affiliated company for these purposes. Section 1850(a) is not intended to exempt affiliates from licensure.

COMMENT NO. 18.3: The commenter requested the definition of "branch office" be amended to clarify that it does not include an employee working remotely from home. The commenter stated that employees working from home are not setting up a separate branch office and they are supervised as they would be at the branch office. Allowing employees to perform telephone/internet-based functions from home merely allows a licensee to be more flexible in its employment practices while providing the same secure services to the public.

Response: The Department agrees with the request to clarify the definition of "branch office." The Department has revised the definition in the second 15-day modified text published on November 15, 2021, to clarify the conduct or activities that constitute a branch office for purposes of registering a location as a branch office with the Department through NMLS.

Comment No. 18.4: The commenter stated the Department should clearly define what constitutes debt collection and debt collection activity, including whether debt collection starts only after an account has been charged off, or if it also includes debt on current accounts or accounts recently in default.

Response: The Department declines to make the recommended changes because they concern statutory definitions in the Debt Collection Licensing Act and are not specifically directed at the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).] The proposed regulations adopt the license application, process for applying for a debt collection license, and other provisions relevant to licensing, including amendment, denial, and surrender of a license. However, the Department will consider the comment in evaluating the need for future rulemaking.

Comment No. 18.5: The commenter requested additional flexibility regarding the requirement to appoint the Commissioner as agent for service of process and stated that a licensee should have the option to use the Commissioner, the licensed entity itself, or a third party for service of process.

Response: The Department declines to make the requested change because the Department has determined that requiring applicants to appoint the Commissioner as agent for service of process is the most effective and least burdensome way for the Department to enforce the Debt Collection Licensing Act and prevent licensees from attempting to evade service in enforcement actions. The proposed regulations require applicants to appoint both a register agent and the Commissioner as agent for service of process. Appointment of the Commissioner as agent for service of process is being required pursuant to the Department's general rulemaking authority in Financial Code section 100003 of the Debt Collection Licensing Act. California law requires businesses to appoint a registered agent for purposes of serving legal process on the business. Whether an applicant may appoint itself as the registered agent depends on California law and the California Secretary of State's requirements.

Comment No. 18.6: The commenter encouraged the Department to continue to weigh the benefits of gathering personal information, including social security numbers and fingerprints, from the licensee's principal officers and others in such a way as to respect the individual's privacy rights and to consider the significant risks associated with a possible data breach, to consider exemptions for SEC 1934 Act filers who are scrutinized public companies, and to more clearly define what qualifies an employee as management for information purposes.

Response: The Department declines to make the recommended changes. The proposed regulations require license applications and other filings to be made through NMLS. NMLS is a secure web-based system that undergoes rigorous testing and reviews to ensure that sensitive and non-public data is protected, including requiring system passwords and deleting dormant user accounts. The Department's protocols are designed to protect personal information and prevent data breaches by among other things, restricting access to licensee information to certain employees who have clearance to review the information. The comment to consider exemptions for SEC 1934 Act filers is not specifically directed at the proposed regulations and therefore outside of the scope of the proposed regulations. Defining what qualifies an employee as management for

information purposes is unnecessary because the management chart in Section 1850.7(a)(9) identifies the management personnel who are required to provide personal information.

Commenter No. 19: Diana R. Dykstra, President/CEO, California Credit Union League

Comment No. 19.1: The commenter proposed the following language be included in the proposed regulations because the Debt Collection Licensing Act does not specifically address whether persons employed by or acting on behalf of an exempt depository institution are subject to the licensing requirements: "The exemption for a depository institution from the provisions of the Debt Collection Licensing Act pursuant to Section 100001(b)(1) of the Financial Code shall also include any employee of the depository institution engaging in the business of debt collection on behalf of the depository institution."

Response: The Department declines to make the recommended change because it is not specifically directed at the proposed regulations and therefore outside the scope of the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).] The proposed regulations adopt the license application, process for applying for a debt collection license, and other provisions relevant to licensing, including amendment, denial, and surrender of a license. However, the Department will consider the comment in evaluating the need for future rulemaking.

Comment No. 19.2: The commenter stated that Section 100001, subdivision (b)(1), of the Financial Code implies that the Department's enforcement authority under the Debt Collection Licensing Act could be interpreted to extend to federal credit unions. While the Department is authorized to license and regulate California state-chartered credit unions, the National Credit Union Administration regulates federal credit union and as a result, such an interpretation would be inconsistent with both state and federal credit union law. The commenter proposed the following language be included in the proposed regulations: "Nothing in Section 100001(b)(2) or 100005(b) of the Financial Code shall be construed to confer enforcement authority with regard to any depository institution not otherwise licensed by the Commissioner."

Response: The Department declines to make the recommended change because it is not specifically directed at the proposed regulations and therefore outside the scope of the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).] The proposed regulations adopt the license application, process for applying for a debt collection license, and other provisions relevant to licensing, including amendment, denial, and surrender of a license. However, the Department will consider the comment in evaluating the need for future rulemaking.

Commenter No. 20: California Association of Micro Enterprise Opportunity, California Low Income Consumer Coalition, Center for Responsible Lending, Community Legal Aid SoCal, Consumer Federation of California, Legal Aid of Marin, Office of Kat Taylor, Public Law Center

Comment No. 20.1: The commenters stated that the definitions of "debt collector" and "debt buyer" do not cover persons who purchase debt not to collect it but to sell it to others and proposed adding language to the

definition of “debt collector” in Section 1850(h) to provide that a debt collector includes “persons who purchase consumer debt but do not engage in debt collection but purchase the debt to sell to another person to engage in debt collection.” The commenters stated that the proposed change will help stop unlicensed activity by addressing regulatory uncertainty.

Response: The Department declines to make the requested change because it concerns statutory definitions in the Debt Collection Licensing Act and is not specifically directed at the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).] The proposed regulations adopt the license application, process for applying for a debt collection license, and other provisions relevant to licensing, including amendment, denial, and surrender of a license. However, the Department will consider the comment in evaluating the need for future rulemaking.

Comment No. 20.2: The commenters stated that the application fee of $350 is far too low when compared to the application fees charged in lower cost states that have far fewer consumers to protect. For example, Arizona, which has a statewide population that is less than that of Los Angeles County, charges an application fee of $1,500 and North Carolina requires a fee of at least $1,000. The commenters recommended increasing the application fee to $1,500 or alternatively charging a $350 fee for each affiliate applying to operate under a single license.

Response: The Department declines to make the requested change because Assembly Bill 137 (Chap. 77, Stats. 2022) sets the license application fee in Financial Code section 100007 of the Debt Collection Licensing Act at $350. A legislative amendment is necessary to make the proposed change.

Comment No. 20.3: The commenters stated Section 1850.7(a)(1) does not establish a standard for evaluating or rejecting proposed fictitious business names and does not clearly prohibit applicants and licensees from using names that have not been approved or have been rejected by the Department. The commenter proposed adding language to Section 1850.7(a)(1)(B) that a fictitious business name is “not a name likely to cause a consumer or debtor to be misled, confused, mistaken, or deceived” and deleting the language in Section 1850.7(a)(1)(C) and replacing it with the following language: “No person licensed to act within this state as a consumer collection agency shall do so under any other name or at any other place of business than that named in the license. No licensee may use any name other than its legal name or a fictitious name approved by the Commissioner, provided such licensee may not use its legal name if the Commissioner disapproves use of such name.” The commenters stated that having a standard will provide an explicit legal basis for rejections the Department can rely upon if challenged.

Response: The Department declines to make the requested changes because they are unnecessary. Section 1850.7(a)(1)(B) provides the Department with discretion to disapprove the use of fictitious business names and Section 1850.30 requires licensees to notify the Department of any changes to the information in their license, including new fictitious business names.

Comment No. 20.4: The commenters stated that the proposed regulations do not require managers to be accountable for the debt collection activities under their management. Colorado law requires debt collectors to identify one person in every office who is personally accountable to the licensing authority for the debt collection operations. The commenters recommended amending Section 1850.7(a)(10) to require applicants to provide the name, mobile phone number, address, physical address, and email address of the manager of every office or unit, including branch managers, who are responsible for the actions of debt collectors working in that office or unit. The commenters also noted that requiring applicants to register their branch offices on Form MU3 through NMLS in Section 1850.7(a)(16) is precedented because Colorado law requires notice of branch offices.

Response: The Department declines to make the recommended change because it is unnecessary and burdensome. Section 1850.7(a)(16) requires applicants to provide the address, contact information, and other information for branch offices on Form MU3 and information on branch managers on Form MU2. Applicants are required to provide on Form MU1 information, including contact information, on their principal place of business and individuals who control the debt collection business or activities. The Department has determined that this information is sufficient for identifying who is responsible for the activities at the applicant's business locations. The proposed change would be burdensome because it would require updating of records every time the contact information of any manager changes. The Department notes the comment that registration of branch offices is precedented.

Comment No. 20.5: The commenters stated that information on the size of the portfolio of debt owed by a consumer under an applicant's collection would be helpful to the Department in assessing the adequacy of the bonding requirements and for prioritizing application processing, and recommended adding the following language to Section 1850.7(a)(15): "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)."

Response: The Department declines to make the recommended change because the Department has decided to delete the provisions concerning higher bonding requirements from the proposed regulations, including the provision in Section 1850.7(a)(15) requiring applicants to provide information on total debt collected. The Department determined that the information is unnecessary for purposes of issuing licenses and premature because further study of the need for higher surety bond amounts is required before proposing regulations. However, the Department will consider the comment if it decides to go forward with future rulemaking on higher bonding requirements. The proposed change to require applicants to provide in the license application the face dollar amount of California debtor accounts is also unnecessary because licensees are already required to provide this information to the Department in their annual reports under Financial Code section 100021 of the Debt Collection Licensing Act. The proposed information does not appear to have any relevance to the Department in prioritizing the processing of applications.

Comment No. 20.6: The commenters stated that other states such as Arizona and Washington require or permit financial statements to be provided with the license application and the absence of such as explicit requirement in the proposed regulations is quite a significant omission. The commenters recommended adding the following language to Section 1850.7(a)(17) to allow the Commissioner to require additional information from applicants and key personnel: "However, the Commissioner may require such financial statements, proof of insurance, and references of all applicants or for a licensee 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."

Response: The Department declines to make the recommended change because it is unnecessary. Financial Code section 100003, subdivision(a)(8), authorizes the Department to require applicants and key personnel to provide the information the Department in its discretion deems necessary to determine an applicant's eligibility for licensure. The Department has determined that the proposed information is not always necessary for this purpose.

Comment No. 20.7: The commenters stated that some states such as Arkansas and Michigan require, as part of initial licensure, key business managers to take and pass a test the demonstrates an understanding of state and federal debt collection licensing laws and requirements and that California consumers would benefit from such a requirement. The commenters recommended amending the proposed regulations to add the following language to new subsection (a)(19) in Section 1850.7: "Every manager, including branch managers, with supervisorial duties over those who engage in debt collection shall be required prior to an application being granted, to pass a written examination , prepared by the Commissioner, in order to assure that a manager is versed in the laws, rules, regulations, that regulate the activities of licensed debt collectors, including federal and California laws prescribing fair debt collection practices. The examination may be provided and taken online."

Response: The Department declines to make the recommended change because it is not specifically directed at the proposed regulations and therefore outside the scope of the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).]

Comment No. 20.8: The commenters stated that the Department cannot protect the public from licensees who are repeat offenders if the Department is deprived of information about the misconduct of those licensees by "regulatory gag clauses" in civil settlement agreements, which make it difficult for the Department to make a "finding that the business will be operated honestly, fairly, efficiently, and in accordance with the requirements of this division." These clauses require the plaintiff to agree not to contact or cooperate with the defendant's regulator or require the plaintiff to withdraw a complaint pending before the regulator. The commenters recommended addressing this concern by requiring licensees to self-report certain actions to the Department and proposed adding the following language to Section 1850.7 in new subsection (a)(19):

"(19) RECORD OF LEGAL DISPUTES. An application for a license as debt collector shall include for each applicant and each direct owner, executive office, 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 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;

(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."

Response: The Department declines to make the recommended changes because they would significantly increase the Department's workload and costs to administer the debt collection licensing program and the proposed information is unnecessary for purposes of issuing licenses. Financial Code section 100003, subdivision(a)(8), authorizes the Department to require applicants and their key personnel to provide the information the Department in its discretion deems necessary to determine an applicant's eligibility for licensure. Individuals are required to file as part of the applicant's license application a Form MU2, which requires them to self-disclose their financial, criminal, civil judicial, and regulatory action history. Applicants are required to disclose similar information in the Form MU1. The Department investigates disclosures as needed. Section 1850.30 requires licensees to notify the Department of any change in the information in the license application, including changes to the applicant's or individual's history. The Department has

determined that this information is sufficient to enable the Commissioner to make a finding concerning an applicant's suitability for licensure.

Comment No. 20.9: The commenters stated that the requirement in Section 1850.10(b)(1) to disclose civil court and bankruptcy records of individuals who are not residents of the United States should apply to all applicants and individuals and the phrase "records concerning" is ambiguous and could be met by submitting uninstructive documents. The commenters recommended deleting the language in Section 1850.7 and requiring applicants and individuals to self-report actions as provided in Comment No. 20.8 above.

Response: The Department declines to make the recommended change because it is unnecessary. Applicants and individuals who reside in the United States must also self-disclose their financial, criminal, civil judicial, and regulatory action history on Form MU2. The Department will review the disclosures to among other things, ensure that they are responsive and conduct further investigation as necessary.

Comment No. 20.10: The commenters recommended clarifying that Section 1850.15(a) permits the Commissioner to deny a license based on the statutory grounds in Financial Code section 100012, subdivisions (b)(1) through (b)(7), regardless of whether the factors in subsection (b) also apply.

Response: The Department declines to make the recommended change because it is unnecessary. Financial Code section 100012, subdivision (b), provides that the Commissioner may deny a license application for any of the reasons in (1) through (7).

Comment No. 20.11: The commenters stated that the Commissioner should examine whether an applicant's net worth is sufficient to sustain its debt collection practices and recommended adding net worth and insurance to the factors in Section 1850.15 the Commissioner will consider in deciding whether to deny a license.

Response: The Department declines to make the recommended change because the Debt Collection Licensing Act does not prescribe any net worth or insurance requirements for applicants and therefore it would be inappropriate to deny a license based on the sufficiency of the applicant's net worth or insurance.

Comment No. 20.12: The commenters stated the Commissioner should be permitted to reject an application if the applicant has violated the self-reporting requirements proposed in Comment No. 8 above and recommended adding in Section 1850.15 that the failure to self-report prior civil lawsuits and administrative discipline as a factor the Commissioner will consider in deciding whether to deny a license.

Response: The Department declines to make the recommended change as discussed in the response to Comment No. 20.8 above.

Comment No. 20.13: The commenters stated the Commissioner should be permitted to reject an application based on the history of direct owners, executive officers, and indirect owners individually and recommended

revising Section 1850.15(c) to provide that an individual's record is sufficient grounds to deny a license application.

Response: The Department declines to make the recommended change because it is unnecessary. Financial Code section 100012, subdivisions (b)(5) and (b)(6), provides that the Commissioner may deny a license if a principal officer, director or other specified individual has violated the Debt Collection Licensing Act or similar regulatory scheme of a foreign jurisdiction or has been held liable by a final judgment in a civil action involving the California Fair Debt Collection Practices Act or Fair Debt Buying Practices Act.

Comment No. 20.14: The commenters stated that the proposed regulations fail to expressly state who is the intended beneficiary of the surety bond and recommended adding language to Section 1850.50(d) to 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 consumer."

Response: The Department declines to make the recommended change because Financial Code section 100019, subdivision (e), provides that the surety bond shall be used for the recovery of expenses, fines, and fees levied by the Commissioner. A legislative amendment is necessary to make the proposed change.

Comment No. 20.15: The commenters stated the surety bond amount in Section 1850.50 is too low for a state with nearly 40 million residents and recommended revising subsections (f) and (g) of Section 1850.50 to provide that the Commissioner may set a higher bond amount for an applicant based on other factors "as necessary to protect 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."

Response: The Department declines to make the recommended change because Financial Code section 100019, subdivision (e)(2), specifies the number of affiliates under the license and the dollar amount of collecting consumer debt by that licensee as the factors the Department may consider in requiring a higher bonding requirement.

Comment No. 20.16: The commenters stated the proposed regulations should require higher bonding requirements as the licensee's debt collection activity increases and recommended amending Section 1850.50 to add the following language to new subsection (h): "The Commissioner 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."

Response: The Department declines to make the recommended change because Financial Code section 100019, subdivision (e)(2), specifies the number of affiliates under the license and the dollar amount of collecting consumer debt by that licensee as the factors the Department may consider in requiring a higher bonding requirement and Financial Code section 100019, subdivision (e), provides the purpose of the surety bond, i.e., the surety bond shall be used for the recovery of expenses, fines, and fees levied by the Commissioner. A legislative amendment is necessary to make the proposed change.

Commenter No. 21: Christina Baine DeJardin, Esq., Kyle E. Lakin, Esq., James R. McCormick, Jr., Esq., Zachary R. Smith, Esq., Delphi Law Group, LLP

Comment No. 21: The commenter urged the Department to clarify the reach of the Debt Collection Licensing Act by providing guidance as to what constitutes a "consumer credit transaction" and whether law firms and management companies that provide homeowner assessment recovery services to their common interest development clients are subject to the Debt Collection Licensing Act's licensing requirement. The commenter stated that if the Legislature intended the collection of homeowners assessment to be an activity triggering the need for a license, the regulations should say so and this can be accomplished by adding a definition of the phrase "on credit" and/or providing a specific exemption for law firms and management companies providing assessment recovery services to common interest development companies.

Response: The Department declines to make the recommended change because it is not specifically directed at the proposed regulations and therefore outside the scope of the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).] The proposed regulations adopt the license application, process for applying for a debt collection license, and other provisions relevant to licensing, including amendment, denial, and surrender of a license. However, the Department will consider the comment in evaluating the need for future rulemaking.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED ON THE MODIFIED TEXT DURING THE NOTICE PERIOD OF JUNE 23, 2021 THROUGH JULY 12, 2021

Commenter No. 1: Carina Hollis, Vice President and General Counsel, Wescom Credit Union

Comment No. 1: The commenter urged the Department to amend the proposed regulations to confirm that the exemption for a depository institution in Section 100001, subdivision (b)(1), of the Financial Code extends to any employee engaging in the business of debt collection on behalf of the depository institution. The commenter stated that the plain text of the code section does not address whether the exemption extends to any persons employed by or acting on behalf of an exempt depository institution and this lack of clarity could inadvertently sweep credit union employees under the Debt Collection Licensing Act's umbrella and subject them to burdensome and unnecessary regulations.

Response: The Department declines to make the requested change. The comment is not regarding a change to the language that was previously made available to the public. [Government Code section 11346.8, subdivision (c).]

Commenter No. 2: David L. Tuyo II, President/CEO, University Credit Union

Comment No. 2: The commenter urged the Department to amend the proposed regulations to confirm that the exemption for a depository institution in Section 100001, subdivision (b)(1), of the Financial Code extends to any employee engaging in the business of debt collection on behalf of the depository institution. The commenter stated that the plain text of the code section does not address whether the exemption extends to any persons employed by or acting on behalf of an exempt depository institution and this lack of clarity could inadvertently sweep credit union employees under the Debt Collection Licensing Act's umbrella and subject them to burdensome and unnecessary regulations.

Response: The Department declines to make the requested change. The comment is not regarding a change to the language that was previously made available to the public. [Government Code section 11346.8, subdivision (c).]

Commenter No. 3: David M. Green, President/CEO, 1st Northern California Credit Union

Comment No. 3: The commenter urged the Department to amend the proposed regulations to confirm that the exemption for a depository institution in Section 100001, subdivision (b)(1), of the Financial Code extends to any employee engaging in the business of debt collection on behalf of the depository institution. The commenter stated that the plain text of the code section does not address whether the exemption extends to any persons employed by or acting on behalf of an exempt depository institution and this lack of clarity could inadvertently sweep credit union employees under the Debt Collection Licensing Act's umbrella and subject them to burdensome and unnecessary regulations.

Response: The Department declines to make the requested change. The comment is not regarding a change to the language that was previously made available to the public. [Government Code section 11346.8, subdivision (c).]

Commenter No. 4: Jan Stieger, Executive Director, Receivables Management Association International

Comment No. 4.1: The commenter repeated the comment previously made in its comment letter dated June 8, 2021, that requiring registration of branch offices is counter to the legislative intent of the Debt Collection Licensing Act.

Response: The Department declines to make the requested change. The comment is not regarding a change to the language that was previously made available to the public. [Government Code section 11346.8, subdivision (c).]

Comment No. 4.2: The commenter repeated the comment previously made in its comment letter dated June 8, 2021, that requiring applicants to appoint the Commissioner as agent for service of process is against the express legislative intent of the Debt Collection Licensing Act.

Response: The Department declines to make the requested change. The comment is not regarding a change to the language that was previously made available to the public. [Government Code section 11346.8, subdivision (c).]

Commenter No. 5: Tamar Yudenfreund, Senior Director, Public Policy, Encore Capital Group, Inc.

Comment No. 5.1: The commenter repeated the comments previously made in its comment letter dated June 8, 2021, urging the Department to amend the proposed regulations to not require separate registration or filing requirements for branch offices or affiliates because it is the equivalent of requiring branch affiliate licensing and to clarify that someone who is working from home remotely does not constitute a "branch office."

Response: The Department declines to make the requested change concerning separate registration or filing requirements for branch offices. The comment is not regarding a change to the language that was previously made available to the public. [Government Code section 11346.8, subdivision (c).] The Department has revised the definition of "branch office" in the second 15-day modified text published on November 15, 2021, to clarify the conduct or activities that constitute a branch office for purposes of registering a location as a branch office with the Department through NMLS.

Comment No. 5.2: The commenter repeated the comment previously made in its comment letter dated June 8, 2021, that the Commissioner should not function as an agent for service of process.

Response: The Department declines to make the requested change. The comment is not regarding a change to the language that was previously made available to the public. [Government Code section 11346.8, subdivision (c).]

Comment No. 5.3: The commenter repeated the comment previously made in its comment letter dated June 8, 2021, that the definition of "branch office" be clarified to exclude employees working from home.

Response: The Department has revised the definition of "branch office" in the second 15-day modified text published on November 15, 2021, to clarify the conduct or activities that constitute a branch office for purposes of registering a location as a branch office with the Department through NMLS.

Comment No. 5.4: The commenter asked that the language in Section 1850.6 that a document is considered filed when the filing is transmitted by NMLS to the Commissioner be modified to provide that a document is

considered filed when it is submitted on NMLS. The commenter stated that a licensee's filing status should not be delayed due to NMLS' delay in transmitting the document to the Commissioner.

Response: The Department declines to make the recommended change because it is unnecessary. According to NMLS, documents are transmitted to a state agency on the same day the document is filed through NMLS. NMLS is unaware of any delays in transmitting documents timely to any state agency.

Comment No. 5.5: The commenter repeated the comment previously made in its comment letter dated June 8, 2021, requesting that the category of "[i]ndividuals responsible for the conduct of the applicant's debt collection activities in this state" be deleted from Section 1850.7.

Response: The Department declines to make the requested change. The comment is not regarding a change to the language that was previously made available to the public. [Government Code section 11346.8, subdivision (c).]

Comment No. 5.6: The commenter repeated the comment previously made in its comment letter dated June 8, 2021, requesting that the language seeking "Regulatory history, particularly in connection with debt collection activities" be deleted from Section 1850.7 or clarified that it is required only if available.

Response: The Department declines to make the requested change. The comment is not regarding a change to the language that was previously made available to the public. [Government Code section 11346.8, subdivision (c).]

<u>Commenter No. 6: Diana R. Dystra, President and CEO, California Credit Union League</u>

Comment No. 6.1: The commenter repeated the comment previously made in its comment letter dated June 8, 2021, that the proposed regulations should expressly state that employees of a depository institution engaged in the business of debt collection on behalf of the depository institution are exempt from the Debt Collection Licensing Act under the depository institution exemption.

Response: The Department declines to make the requested change. The comment is not regarding a change to the language that was previously made available to the public. [Government Code section 11346.8, subdivision (c).]

Comment No. 6.2: The commenter repeated the comment previously made in its comment letter dated June 8, 2021, that the proposed regulation should expressly state that the Department's enforcement authority does not extend to federal credit unions.

Response: The Department declines to make the requested change. The comment is not regarding a change to the language that was previously made available to the public. [Government Code section 11346.8, subdivision (c).]

Commenter No. 7: California Association for Micro Enterprise Opportunity, California Low Income Consumer Coalition, California Reinvestment Coalition, Center for Responsible Lending, Community Legal Aid SoCal, Consumer Federation of California, Legal Aid of Marin, Office of Kat Taylor, Public Law Center

Comment No. 7.1: The commenters opposed the change to delete the requirement in Section 1850.7(a)(9) that applicants provide their compliance reporting and internal audit structure in the management chart. The commenters stated that the requirement would show that applicants have an infrastructure that promotes compliance with laws and suggested filing the information directly with the Department if it cannot be filed through NMLS.

Response: The Department declines to make the requested change because the Department has determined that the information is unnecessary for purposes of issuing licenses. The Department's determination, however, does not prevent the Department from requiring licensees to provide information on their compliance programs as necessary pursuant to the Department's examination and investigative authority in Financial Code section 100004 to ascertain their compliance with the provisions of the Debt Collection Licensing Act.

Comment No. 7.2: The commenters opposed the change to delete the requirement in Section 1850.7(a)(10)(D) that applicants identify and provide specified information on third parties the applicant intends to use to perform any of its debt collection functions. The commenters stated that deleting the requirement would frustrate the license eligibility requirements by allowing these unscreened persons to operate as if they are licensees.

Response: The Department declines to make the requested change because the Department has determined that the information is unnecessary for purposes of issuing licenses. The Department's determination, however, does not prevent the Department from requiring licensees to provide the information as necessary pursuant to the Department's examination and investigative authority in Financial Code section 100004 to ascertain their compliance with the provisions of the Debt Collection Licensing Act.

Comment No. 7.3: The commenters opposed the change to delete the requirement in Section 1850.7(a)(15) for applicants to provide the total dollar of debt collected from consumers in the prior year. The commenters stated that the Department appears to be deleting the more probative of the debt collection data, which would be useful for determining whether and to what extent consumers may be exposed to harm by granting an application.

Response: The Department declines to make the requested change because the Department has determined that the information is unnecessary for purposes of issuing licenses. Financial Code section 100021, subdivision (a)(1)(4), requires licensees to report this information annually to the Department.

Comment No. 7.4: The commenters opposed the change to delete Section 1850.50(d) and (e), which provided that the Commissioner may periodically set a higher minimum surety bond amount for a licensee based on the total dollar amount of consumer debt collected by the licensee and required the licensee to file a new surety bond for the higher amount. The commenters stated the requirements were a critical backstop for harmed consumers who have no other recourse and that memorializing the Department's authority by regulations makes any challenge to requiring additional bonding harder for a licensee to win and less costly for the Department to defend.

Response: The Department declines to make the requested change because the Department has determined that the provisions are unnecessary for purposes of issuing licenses. Section 1850(c) sets the surety bonding requirement to obtain a license at $25,000. While the Department may later decide to increase the surety bond amount from $25,000, further study is needed before proposing regulations to raise the bonding requirements and therefore the provisions in Section 1850.50(d) and (e) are unnecessary now.

Comment Nos. 7.5., 7.6., 7.7, 7.8, 7.9 and 7.10: The commenters repeated the comments that were previously made in their comment letter dated June 8, 2021: Comment No. 7.5 (require in Section 1850.7(a)(10) that applicants provide the name, mobile phone number, address, physical address, and email address of every manager responsible for the actions of the debt collectors working in the office or unit), Comment No. 7.6 (require applicants to provide the face value of the California debtor accounts as part of the supplemental information in Section 1850.7(a)(15)), Comment No. 7.7 (permit the Commissioner to require applicants to provide additional information in the license application, including financial statements and proof of insurance), Comment No. 7.8 (require applicants and other individuals to self-report certain actions in new Section 1850.7(a)(19)), Comment No. 7.9 (provide that the bond is for the benefit of consumers), and Comment 7.10 (require higher bonding requirements as the licensee's debt collection activity increases and for other reasons necessary to protect consumers and businesses.)

Response: The Department declines to make the recommended changes. Comment Nos. 7.5, 7.7 and 7.8 are not regarding a change to the language that was previously made available to the public. [Government Code section 11346.8, subdivision (c).] The Department has determined that the change recommended in Comment Nos. 7.6 is unnecessary for purposes of issuing licenses and the changes proposed in Comment No. 7.9 require legislative action.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE NOTICE PERIOD OF NOVEMBER 15, 2021 THROUGH DECEMBER 2, 2021

<u>Commenter 1: Jeffrey Kolsin, Jeffrey Kolsin CPA, Inc.</u>

Comment No. 1: The commenter suggested requiring signatures of foreign applicants to be guaranteed by the bank to ensure that the applicant and bank are real.

Response: The Department declines to make the suggested change. The comment is not regarding a change to the language that was made available to the public during this comment period. [Government Code section 11346.8, subdivision (c).]

Commenter 2: Thomas Leonard, Executive Director, California Financial Service Providers

Comment No. 2: The comments concern the Department's Invitation for Comments on Proposed Second Rulemaking Under the Debt Collection Licensing Act, which is a different regulatory proposal and unrelated to this proposed rulemaking.

Response: The Department declines to address the comments in these proposed regulations because the comments are not regarding a change to the language that was made available to the public during this comment period. [Government Code section 11346.8, subdivision (c).] However, the Department will consider the comments in connection with its other regulatory proposal concerning the Debt Collection Licensing Act.

Commenter 3: Janet Wilcox, Kriger Law Firm

Comment No. 3: The commenter stated that the law firm's collection activities do not fit the true definition of a debt collector and asked if the law firm needs to be licensed. The commenter explained that the law firm sends a demand letter to collect delinquent assessments from homeowners on behalf of the firm's clients and places a lien on the property if the homeowner does not respond.

Response: The Department declines to address the comment because it concerns statutory definitions in the Debt Collection Licensing Act and is not specifically directed at the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).]

Commenter 4: Ed Vallejo

Comment No. 4: The commenter requested adding provisions of Regulation X and the Real Estate Settlement Procedures Act to the proposed regulations to ensure that consumers are provided with better and more timely information about settlements and to protect them from abusive practices.

Response: The Department declines to make the requested change. The comment is not regarding a change to the language that was made available to the public during this comment period. [Government Code section 11346.8, subdivision (c).]

Commenter 5: Terry W. Quinn

Comment No. 5: The commenter recommended requiring every debt collector or loan servicer to validate the debt is legal and to be properly licensed and requiring the Department to annually verify the licensee's status.

Response: The Department declines to make the recommended changes. The comments are not regarding a change to the language that was made available to the public during this comment period. [Government Code section 11346.8, subdivision (c).]

Commenter 6: Donald Sherrill, President, California Creditors Bar Association

Comment No. 6: The commenter stated that the new language being proposed to the definition of "branch office" ("if activity related to debt collection occurs at the location and the location is held out to the public as a business location or money is received or held at the location") creates uncertainty and is overly broad. The commenter stated that the language would require members who operate law firms at offices located outside of California to register their offices even though these non-California offices do not engage in California debt collection.

Response: The Department disagrees with the comment. The Debt Collection Licensing Act requires persons engaged in the business of debt collection to be licensed. The branch office registration requirements apply to activity subject to the Debt Collection Licensing Act.

Commenter 7: Jan Stieger, Executive Director, Receivables Management Association International

Comment No. 7: The commenter stated its support of all the edits proposed in the second modified text.

Response: The Department appreciates the commenter's support.

Commenter 8: Irene Jasper, Director, Duke University, Office of Personal Finance & Student Loans

Comment No. 8: The commenter stated that the school's collection activities involve the billing servicer, the school's Office of Personal Finance & Student Loans, and third-party collection agencies. The commenter asked which of the three parties is required to be licensed.

Response: The Department declines to address the comment because it concerns statutory definitions in the Debt Collection Licensing Act and is not specifically directed at the proposed regulations. [Government Code section 11346.9, subdivision (a)(3).]

Commenter 9: California Association for Micro Enterprise Opportunity, California Low Income Consumer Coalition, California Reinvestment Coalition, Center for Responsible Lending, Consumer Attorneys of California, Consumer Federation of California, Office of Kat Taylor, Public Law Center

Comment No. 9: The commenter stated that the new language added to the definition of "branch office" creates an incentive for applicants and licensees to be less than transparent with the Department about their business operations and will result in the Department not knowing about every location where debt collection activity is occurring.

Response: The Department declines to change the definition of "branch office" because the concern appears to be premature. The Department will review and monitor the activities of licensees through examinations and reporting requirements before determining whether further changes are needed to ensure that applicants and licensees are reporting and registering all branch locations with Department.

Commenter 10: Tamar Yudenfreund, Senior Director, Public Policy, Encore Capital Group, Inc. and Midland Credit Management, Inc.

Comment No. 10.1: The commenter urged the Department to revise the modified definition of "branch office" to provide that a business location that serves only as a call center and is not intended to be public-facing does not require a branch office registration. The commenter stated that under the modified definition branch office registration would appear to be required for an office that is a call center and not generally public-facing if a consumer is able to walk into the call center and drop off a payment.

Response: The Department declines to make the requested change. The Department is responsible for overseeing all debt collection activity of licensees, including activity being conducted at call centers operated by licensees.

Comment No. 10.2: The commenter urged the Department to modify the definition of "branch office" by removing the language, ". . . including the location on business cards, letterhead, or any other correspondence. . ." The commenter stated that this language is too broad because business cards and letterhead are primarily used for business purposes and not to communicate with consumers or the general public and correspondence includes correspondence by a business with third parties who are not consumers or members of the general public.

Response: The Department declines to make the requested change. The Department is responsible for overseeing debt collection activity at branch locations. Identifying the location on business cards, letterhead, and other correspondence of the applicant or licensee indicates that the location is a business location of the applicant or licensee.

Comment No. 10.3: The commenter repeated the comment that was previously made in its comment letters that the MU3 registration requirement for branch licenses be eliminated from the proposed regulations.

Response: The Department declines to make the recommended changes. The comments are not regarding a change to the language that was made available to the public during this comment period. [Government Code section 11346.8, subdivision (c).]

Comment No. 10.4: The commenter repeated the comment that was previously made in its comment letters that the MU1 and other licensing requirements for affiliates be eliminated from the proposed regulations.

Response: The Department declines to make the recommended changes. The comments are not regarding a change to the language that was made available to the public during this comment period. [Government Code section 11346.8, subdivision (c).]

Commenter 11: Diana R. Dykstra, President and CEO, California Credit Union League

Comment No. 11.1: The commenter repeated the comment that was previously made in its comment letters that the Debt Collection Licensing Act does not specifically address whether persons employed by or acting on behalf of an exempt depository institution are subject to the licensing requirements and recommended language to clarify that the exemption for a depository institution in Section 100001(b)(1) of the Financial Code includes any employee of the depository institution engaging in the business of debt collection on behalf of the depository institution.

Response: The Department declines to make the recommended changes. The comments are not regarding a change to the language that was made available to the public during this comment period. [Government Code section 11346.8, subdivision (c).]

Comment No. 11.2: The commenter repeated the comment previously made in its comment letters that the proposed regulations should clarify that the Department does not have enforcement authority with regard to any depository institution not otherwise licensed by the Commissioner.

Response: The Department declines to make the recommended change. The comment is not regarding a change to the language that was made available to the public during this comment period. [Government Code section 11346.8, subdivision (c).]

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

The Department has not identified any alternatives and no alternatives were proposed to the Department that would lessen any adverse economic impact on small business.

ALTERNATIVES DETERMINATION

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

The amendments adopted by the Department are the only regulatory provisions identified by the Department that accomplish the goal of protecting California residents by ensuring that persons engaged in the business of

debt collection meet the eligibility requirements for licensure and are licensed. No reasonable alternatives have been proposed or otherwise brought to the Department's attention.

LOCAL MANDATE DETERMINATION ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts.

INCORPORATION BY REFERENCE

The proposed regulations incorporate by reference the following documents in their entirety:

- NMLS Company Form (Form MU1), Version 11.0, dated 09/12/15
- NMLS Individual Form (Form MU2), Version 9, dated 9/12/16
- NMLS Branch Form (Form MU3), Version 10, dated 03/31/2014
- Surety Bond, ESB Form version 1, effective 07/01/2021, NMLS Version: CA-DFPI – 07/01/2021

The Department has determined that it would be cumbersome, burdensome, and impractical to publish the NMLS forms in the California Code of Regulations because the forms are lengthy with specific formatting requirements. The forms are uniform for every Department licensing law that requires the use of NMLS and therefore it would be impractical and unduly expensive to include the same uniform forms within each licensing law's regulations. The application forms are the basis for an interactive electronic filing of the information contained in the forms, and publishing the forms in the California Code of Regulations may confuse an applicant or licensee and result in the applicant or licensee attempting to file the form rather than submitting the information electronically. Further, NMLS provides extensive information to applicants and licensees on how to navigate the NMLS system and file or upload the requested information and publishing the forms may confuse an applicant or licensee seeking information on how to submit the information. The forms are readily available to the public through the NMLS website. Live links to the forms are provided on the Department's website and both the Department and NMLS maintain call centers to assist applicants and licensees in accessing the uniform forms. Applicants who operate debt collection businesses in other states are likely already familiar with the NMLS forms because many states require licensure of debt collectors through NMLS.

The Department has determined that it would be cumbersome, burdensome, and impractical to publish the surety bond form in the California Code of Regulations because the form must be completed by sureties and electronically filed through NMLS, and publishing the form in the California Code of Regulations may confuse the applicant or surety and result in the surety attempting to file the bond form rather than submitting it electronically, which will unnecessarily delay issuance of licenses. The surety bond form has been made available to the public. The surety bond form was published on May 11, 2021 and republished on June 29,

2021, in section 31.29 of title 11 of the California Code of Regulations and the Department has posted the notices of filing and surety bond forms on its website. (The surety bond forms published on May 11 and June 29 are identical except for adding a version number and effective date to the June 29 form.) The surety bond form will also be made available to the public on the NMLS website by September 1, 2021. NMLS provides extensive and specific information to applicants, licensees, and sureties on how to electronically file surety bonds and publishing the bond form may confuse an applicant or licensee seeking information on how to file a bond. Both the Department and NMLS maintain call centers to assist applicants and licensees in filing surety bonds.

DOCUMENTS RELIED UPON

The Department relied on the following documents in proposing the regulations:

- NMLS Policy Guidebook, updated April 1, 2021
- Legislative analyses of Senate Bill 908, specifically Assembly Committee on Banking and Finance, Analysis of Senate Bill 908 (2019-2020) as amended August 10, 2020

The Department made the documents available to the public throughout the rulemaking. The Department maintained the documents in the Debt Collection Licensing rulemaking file, which was made available for public inspection and copying.

NMLS maintains only one NMLS Policy Guidebook, which is also available on the NMLS' website. The Department relied on the NMLS Policy Guidebook to understand the NMLS filing forms and processes.

The Department relied on the legislative analyses of Senate Bill 908, specifically Assembly Committee on Banking and Finance, Analysis of Senate Bill 908 (2019-2020) as amended August 10, 2020, in determining that the proposed regulations will not have a significant adverse economic impact on business.

UPDATE TO DESCRIPTION OF ALL COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department has updated the annual estimated costs to comply with requirements to maintain a license to include a $20 annual NMLS renewal fee for each branch office. Licensees will likely incur a savings from filing branch information online through NMLS, which may offset the annual fee.

REVISED ESTIMATE OF COST OR SAVINGS ON STATE AGENCY

The Department has revised the total statewide costs from the proposed regulations. The total costs to the Department to implement the proposed regulations are $3.6 million and $3.5 million in ongoing costs.