

TITLE 10. INVESTMENT

PROPOSED REGULATIONS UNDER THE DEBT COLLECTION LICENSING ACT

PRO 02/20 – MODIFICATIONS TO 45-DAY TEXT

Changes proposed during the 45-day notice are shown in single underline for additions. Proposed changes for the first 15-day notice are shown in double underline for additions and ~~single strikeout~~ for deletions. Changes proposed for this second 15-day notice are shown in **bold underline** for additions and ~~**bold strikeout**~~ for deletions.

Subchapter 11.3. Debt Collection Licensing Act.

1. Article 1, Section 1850 is adopted to read:

Article 1. Definitions.

§ 1850. Definitions.

The following terms used in subchapter 11.3 of title 10 shall have (unless the context indicates otherwise) the following meanings:

(a) “Affiliate” means any person controlling, controlled by, or under common control with, the specified person, directly or indirectly, through one or more intermediaries. “Affiliate” includes an affiliated company. ~~An affiliate is an applicant for purposes of the Debt Collection Licensing Act.~~

(b) “Applicant” means any person, including any of its affiliates, who applies for a license under the Debt Collection Licensing Act. ~~An affiliate who is not applying for a~~

license is not an applicant for purposes of licensure under the Debt Collection Licensing Act.

(c) "Branch office" means a location other than the applicant's or licensee's principal place of business identified in a license application or an amended application 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 a location 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.

(d) "Commissioner" means the Commissioner of Financial Protection and Innovation.

(e) "Control" means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. A person who, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the then outstanding voting securities issued by another person is presumed to control such other person. For purposes of this subchapter, the Commissioner may determine whether a person in fact controls another person.

(f) "Debt buyer" means a person or entity that is regularly engaged in the business of purchasing charged-off consumer debt for collection purposes, whether it

collects the debt itself, hires a third party for collection, or hires an attorney-at-law for collection litigation. "Debt buyer" does not mean a person or entity that acquires a charged-off consumer debt incidental to the purchase of a portfolio predominantly consisting of consumer debt that has not been charged off.

(g) "Debt Collection Licensing Act" means California Financial Code section 100000 et seq.

(h) "Debt collector" ~~means any person who, in the ordinary course of business, regularly, on the person's own behalf or on behalf of others, engages in consumer debt collection. The term includes any person who composes and sells, or offers to compose and sell, forms, letters and other collection media used or intended to be used for debt collection. The term "debt collector" includes "debt buyer" has the same meaning as set forth in subdivision (j) of Section 100002 of the Financial Code.~~

(i) "Form MU1" means the uniform licensing form, entitled "NMLS Company Form", developed by the Nationwide Multistate Licensing System & Registry and used to provide information on a company or sole proprietor license applicant. Version 11.0, dated 09/12/15, is hereby incorporated by reference in its entirety.

(j) "Form MU2" means the uniform licensing form, entitled "NMLS Individual Form," developed by the Nationwide Multistate Licensing System & Registry and used to provide information on an individual who directly or indirectly owns or controls the activities of the applicant, branch office, including principal officers, directors, and other individuals specified on Form MU1 or Form MU3. Version 9, dated 9/12/2016, is hereby incorporated by reference in its entirety.

(k) "Form MU3" means the uniform licensing form, entitled "NMLS Branch Form," developed by the Nationwide Multistate Licensing System & Registry and used to provide information on branch offices. Version 10, dated 03/31/2014, is hereby incorporated by reference in its entirety.

(l) "Individual" means a natural person.

(m) "Licensee" means any person who is licensed under the Debt Collection Licensing Act. "Licensee" includes the person named on the license and any person listed on the license.

(n) "NMLS" means the Nationwide Multistate Licensing System & Registry.

~~(o) "Policies and procedures" mean the policies and procedures a licensee is required to develop to promote compliance with the Debt Collection Licensing Act pursuant to Section 100019, subdivision (a), of the Financial Code.~~

(p) "Principal officers" means the president, chief executive officer, treasurer and chief financial officer and any other officer with direct responsibility for the conduct of the applicant's debt collection activities in this state.

Note: Authority cited: Section 100003, Financial Code. Reference: Section 1788.50, Civil Code; Sections 100002, 100003, 100006.3, 100009 and 100019, Financial Code.

2. Article 2, Section 1850.6 is adopted to read:

Article 2. Application for Licensure and Related Forms.

§ 1850.6. Electronic Filings.

(a) DESIGNATION: The Commissioner designates NMLS to receive and store filings, obtain credit reports, and collect related fees and assessments from applicants and licensees on behalf of the Commissioner.

(b) USE OF NMLS: All applications, amendments, surety bonds, notices, related filings, supporting documents, renewals, authorizations, assessments and fees required to be filed with the Commissioner shall be filed electronically with and transmitted to NMLS, except as otherwise indicated in this subchapter. The following conditions relate to electronic filings:

(1) Electronic Signature: When a signature or signatures are required by the particular instructions of any filing, including any attestation to be made through NMLS, a duly authorized officer or proper delegate of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate field and submitting the filing to the Commissioner through NMLS. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individual making the filing.

(2) When filed: Solely for purposes of a filing made through NMLS, unless otherwise specified, a document is considered filed with the Commissioner when all fees are received and the filing is transmitted by NMLS to the Commissioner.

(3) An applicant shall provide through NMLS the necessary authorizations so that NMLS may obtain credit reports.

(4) Any document required to be filed with the Commissioner that is not permitted to be filed with or cannot be filed with NMLS shall be filed directly with the Commissioner.

Note: Authority cited: Section 100003, Financial Code. Reference: Section 1633.7, Civil Code; and Sections 100004, 100006, 100006.3 and 100015, Financial Code.

3. Section 1850.6.1 is adopted to read:

§ 1850.6.1. Language.

Each document filed with the Commissioner shall be in the English language. However, whenever the Commissioner requires that a document which is not in the English language be filed with the Commissioner, such document shall, when filed with the Commissioner, be accompanied by an English translation, and there shall be attached to or endorsed on such English translation a certificate signed by the translator certifying that the translation is a true translation in the English language of the document. If the document or any document of which such document is a part is required to be verified, the certificate of the translator shall be verified.

Note: Authority Cited: Section 100003, Financial Code. Reference: Section 100009, Financial Code.

4. Section 1850.7 is adopted to read:

§ 1850.7. License Application for Debt Collector.

The procedures set forth in this section are applicable to a person who is required to be licensed as a debt collector pursuant to Section 100001, subdivision (a), of the Financial Code. The application for a license shall be filed as follows:

(a) INITIAL APPLICATION: The applicant shall complete and file Form MU1 in accordance with the instructions of NMLS for transmission to the Commissioner. All

exhibits and supporting documents related to the application or amendment required by NMLS or identified in this section shall also be filed with NMLS, in accordance with the instructions of NMLS for transmission to the Commissioner. Exhibits that cannot be filed with NMLS, if any, shall be filed directly with the Commissioner. The notices set forth in Section 1850.11 of these rules are part of every application.

For affiliates seeking to be licensed under a single license, each affiliate must file a Form MU1 and comply with all licensing requirements except for the application fee, which is a single \$350 fee for the Form MU1 filings. The Department of Financial Protection and Innovation will issue a single license listing the names of all the affiliates. An affiliate may be licensed under only one debt collector license.

An applicant shall provide the following information, exhibits and documentation in the manner provided.

(1) OTHER TRADE NAMES: An applicant shall provide all fictitious business names on Form MU1.

(A) For each fictitious business name, an applicant shall file with NMLS a copy of the Fictitious Business Name Statement with the “filed” stamp from the county clerk's office.

(B) An applicant shall not engage in debt collection using a fictitious business name until the Commissioner approves the use of the name.

(C) Every applicant and licensee shall comply with the laws governing the filing of a fictitious business name set forth in Business and Professions Code sections 17900 through 17930.

(2) REGISTERED AGENT: Every applicant shall provide a registered agent for service of process located within the state of California through NMLS on Form MU1. Every applicant shall also file directly with the Commissioner through NMLS an Appointment of the Commissioner of Financial Protection and Innovation as Agent for Service of Process in accordance with Section 1850.8 of these rules by emailing the completed form to the Debt Collection Licensing Program at DebtCollectionLicensing@dfpi.ca.gov.

(3) WEBSITE ADDRESS: An applicant shall provide through NMLS on Form MU1 the full web address(es) for the applicant and any separate websites for the fictitious business names, and indicate whether the applicant transacts business through the website(s).

(4) ADDITIONAL CONTACT EMPLOYEES: An applicant shall provide through NMLS the names of the contact employees for consumer complaints received from the public and legal matters on Item Number 7 of Form MU1.

(5) ORGANIZATIONAL CHART: An applicant shall file with NMLS an organizational chart identifying, by individual or company name:

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

The organizational chart shall describe the control relationship(s) with the affiliates and control entities, including the percentage of ownership or interest, and

identify the names and NMLS entity ID numbers of the affiliates seeking to be licensed together under a single license and the affiliate designated as the primary licensee for purposes of examination. For each affiliate identified in Item Number 12 of Form MU1, the applicant shall include under "Description" whether the affiliate is seeking to be licensed with other affiliate(s) under a single license and if so, the name(s) and NMLS entity ID number(s) of those affiliate(s), and identify which affiliate is the primary licensee for purposes of examination. Affiliates must provide their NMLS entity ID number to each co-applicant affiliate to enable the affiliate to complete their Form MU1.

(6) DIRECT OWNERS, EXECUTIVE OFFICERS AND INDIRECT OWNERS:

(A) An applicant shall identify the following individuals through NMLS on Form MU1 in the "Direct Owners and Executive Officers" or the "Indirect Owners" section, as applicable, and provide identifying information, including government-issued identification number and the issuing state and country, ~~and passport number and passport issuing country~~; names used; personal history; employment and other business history; and experience of each individual on Form MU2:

- Applicant (if an individual);
- Principal officers;
- Directors;
- Managing members (if the applicant is a limited liability company);
- General partners (if the applicant is a partnership);
- Trustees (if the applicant is a trust);
- Individuals owning or controlling, directly or indirectly, ten percent (10%) or more of the applicant; and

- Individuals responsible for the conduct of the applicant's debt collection activities in this state,

(B) The individuals named on Form MU1 for whom a Form MU2 has been filed shall provide authorization for and subsequent delivery of fingerprints to the California Department of Justice to check criminal history. Fingerprinting shall be done in accordance with Section 1850.9 of these rules.

(C) An applicant must file an investigative background report for any individual named on Form MU1 for whom a Form MU2 has been filed and who is not residing in the United States or has not resided in the United States for at least ten years, in accordance with Section 1850.10 of these rules. This investigative report shall be required in addition to fingerprinting.

(D) An applicant shall pay all fees related to fingerprinting, the criminal history background check, and the investigative background report.

(7) FINGERPRINTS: Every individual for whom a Form MU2 has been filed shall submit fingerprints in accordance with Section 1850.9 of these rules. An applicant shall file with NMLS a copy of the California Department of Justice Request for Live Scan Service form for each individual required to be fingerprinted as proof of completion of fingerprinting.

(8) CREDIT REPORT: Every individual for whom a Form MU2 has been filed shall provide through NMLS the necessary authorizations for NMLS to obtain a credit report for the individual and an explanation of all derogatory credit accounts in the credit report.

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

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

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

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

(A) The methods that will be used to collect consumer debt.

(B) Any products or services offered to consumers or required to be accepted or purchased by consumers in connection with debt collection activities.

(C) Whether any other business will be solicited or engaged in at the applicant's place(s) of business.

(D) Whether and to what extent the applicant intends to use third parties to perform any of its debt collection functions, such as marketing, collecting or any other

functions and if so, the names of the third parties and their website address and principal place of business.

(E) Any additional activities that the applicant intends to engage in that are not specified in Item Number 1 of Form MU1.

(11) BUSINESS APPLICANTS: A business entity shall file the following documents with NMLS:

(A) A corporate applicant shall file a certificate of qualification or good standing from the California Secretary of State, executed not more than sixty (60) calendar days before the filing of the application, showing that the applicant is authorized to transact business in the State of California.

(B) A foreign corporation shall file a certificate of qualification or good standing from the Secretary of State of the state of incorporation, executed not more than sixty (60) calendar days before the filing of the application, showing that the applicant is authorized to transact business in that state.

(C) A partnership applicant shall file its partnership agreement.

(D) A limited liability company shall file its operating agreement.

(E) A limited partnership or limited liability company applicant shall file a certificate of qualification or good standing from the California Secretary of State, executed not more than sixty (60) calendar days before the filing of the application, showing that the applicant is authorized to transact business in the State of California.

(F) A foreign limited partnership or limited liability company applicant shall file a certificate of qualification or good standing from the Secretary of State of the state of

formation, executed not more than sixty (60) days before the filing of the application, showing that the applicant is authorized to transact business in that state.

(12) SURETY BOND: An applicant shall file the surety bond required by Section 100019, subdivision (e), of the Financial Code through NMLS, utilizing NMLS' electronic surety bond function and form, in accordance with Section 1850.50 of these rules.

(13) POLICIES AND PROCEDURES: An applicant shall file with NMLS a copy of its policies and procedures, demonstrating how the applicant will comply with the Debt Collection Licensing Act, the Rosenthal Fair Debt Collection Practices Act (Civil Code section 1788 et seq.), the Fair Debt Buying Practices Act (Civil Code section 1788.50 et seq.), and these rules, related to consumer protection.

(1413) DOCUMENT SAMPLES: An applicant shall file with NMLS a sample of the initial letter required pursuant to Section 1692g of Title 15 of the United States Code that the applicant will use in correspondence with California consumers and a sample of the notice required pursuant to Section 1788.52, subdivision (d), of the Civil Code that the applicant will use in correspondence with California consumers.

(1514) SUPPLEMENTAL INFORMATION: An applicant shall file the following information on debt collection activities as of the prior year-end directly with the Commissioner through NMLS by emailing the following information to the Debt Collection Licensing Program at DebtCollectionLicensing@dfpi.ca.gov:

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

- The total dollar amount of net proceeds generated by California debtor accounts (i.e., from accounts that are owned by consumers who reside in California at the time the consumer made a payment on the account) as of the prior calendar year-end. The information is required to calculate the licensee's assessment for the year of licensing pursuant to California Financial Code section 100020, subdivision (a).

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

(1615) BRANCH OFFICE: An applicant shall register its branch offices by filing with NMLS a Form MU3 for each branch office.

(A) An applicant that intends to conduct business at a branch office under a fictitious business name shall file with NMLS a copy of the Fictitious Business Name Statement with the "filed" stamp from the county clerk's office.

(B) An applicant shall not use a fictitious business name until the Commissioner approves the use of the name.

(C) An applicant shall indicate each branch manager as a branch manager on Form MU3 and file with NMLS a Form MU2 for each branch manager.

(D) An applicant shall provide for each branch office through NMLS on Form MU3 the full web address(es) for the branch office and any separate websites for the fictitious business names, and indicate whether the applicant transacts business through the website(s).

(E) The Commissioner may request other information, documentation or detail pertaining to a branch office that cannot be filed through NMLS to be filed directly with the Commissioner.

(4716) BANK ACCOUNT/QUALIFYING INDIVIDUAL: An applicant is not required to provide bank account information in Section 10 of Form MU1 or information on a qualifying individual in Section 17 of Form MU1.

(4817) ATTESTATION: The individual attesting to the filing of the Form MU1 must be a duly authorized individual who has submitted a Form MU2 or has been delegated to attest to the filing by an individual who has submitted a Form MU2. The attestation provided pursuant to this paragraph shall constitute an agreement to comply with the requirements of the Debt Collection Licensing Act.

(b) FEES: An application fee of \$350 and an investigation fee of \$150 per applicant shall be paid through NMLS for transmission to the Commissioner. Any fees that cannot be paid through NMLS shall be paid directly to the Commissioner. The NMLS fees for obtaining credit reports, annual processing fees, and any other NMLS fees shall be paid by applicants and licensees to NMLS through NMLS. Fees are not refundable.

(c) COMPLETION OF FILING and ISSUANCE OF LICENSE: An application for a license as a debt collector is not deemed complete until all required fees, all required submissions, and all background and investigative reports are received by the Commissioner. The filing of Form MU1 with NMLS does not constitute automatic approval of a license. An applicant shall not consider the application approved until it is approved by the Commissioner and the Commissioner ~~notifies issues a license to the~~

applicant of the license approval. The Commissioner shall email the approval of the license to the individual named in the Form MU1 as the "Primary Company Contact". In accordance with Section 100013 of the Financial Code, the Commissioner may consider a Form MU1 application abandoned if the Commissioner does not receive information requested in a deficiency notification within sixty (60) calendar days of the date of notification.

(d) FILING AN AMENDMENT: In the event of a change to the information in the application, or the exhibits or supporting documents, the applicant shall file an amendment to the Form MU1, MU2, or MU3 through NMLS in accordance with the procedures in Sections 1850.30, 1850.31 and 1850.32 of these rules. Prior to the issuance of a license, any amendment to an application shall be filed within ten (10) calendar days of the event requiring the amendment.

Note: Authority cited: Section 100003, Financial Code. Reference: Sections 494.5, 17900, 17910, 17913, 17915, 17916 and 17926, Business and Professions Code; Sections 1788.52, 1798.17 and 1798.24, Civil Code; Section 1505, Corporations Code; Section 17520, Family Code; Sections 100001, 100003, 100004, 100005, 100006.3, 100007, 100008, 100009, 100011, 100013, 100015, 100018 and 100019, Financial Code; Section 11077.1, Penal Code; 5 U.S.C. section 552a; and 15 U.S.C. section 1692g.

5. Section 1850.8 is adopted to read:

§ 1850.8. Appointment of Commissioner as Agent for Service of Process.

(a) Applicants are required to complete, in accordance with subsections (b) and (c) of this section, the following Appointment of Commissioner of Financial Protection and Innovation as Agent for Service of Process form:

STATE OF CALIFORNIA - DEPARTMENT OF FINANCIAL PROTECTION AND
INNOVATION
APPOINTMENT OF COMMISSIONER OF FINANCIAL PROTECTION AND
INNOVATION AS AGENT FOR SERVICE OF PROCESS PURSUANT TO SECTION
100003 of the California Financial Code

State of California
Department of Financial Protection and Innovation
Debt Collection Licensing Program

Name of debt collector, which is applying for a license under the Debt Collection Licensing Act (commencing with Section 100000 of the California Financial Code), hereinafter referred to as "Debt Collector," hereby irrevocably appoints the Commissioner of Financial Protection and Innovation of the State of California and his or her successor to be the Debt Collector's agent to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the Debt Collector, or any successor, executor, or administrator of the Debt Collector, which arises under the Debt Collection Licensing Act, or under any regulation or order issued

under the Debt Collection Licensing Act, with the same force and validity as if served personally on the Debt Collector, or any successor, executor or administrator of the Debt Collector.

Name of Debt Collector (Printed)

By: _____
(Signature)

Name of Signatory (Printed): _____

Title of Signatory: _____

Dated: _____

(b) The Appointment form in subsection (a) of this section must be signed by an individual with authority to sign on behalf of the debt collector.

(c) Applicants must file the completed and signed Appointment form directly with the Commissioner through NMLS by emailing the form to the Debt Collection Licensing Program at DebtCollectionLicensing@dfpi.ca.gov.

(d) Service may be made by leaving a copy of the process at any office of the Commissioner. The party making service must do the following for service to be effective:

(1) Send notice of service and a copy of the process by registered or certified mail to the party served at its last address on file with the Commissioner; and

(2) File an affidavit of compliance with this subsection on or before the return date, if any, or within such further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

Note: Authority cited: Section 100003, Financial Code. Reference: Sections 100003, 100005, 100006.3 and 100015, Financial Code.

6. Section 1850.9 is adopted to read:

§ 1850.9. Fingerprints and Background Checks.

(a) The individuals for whom a Form MU2 has been filed must submit fingerprints through the California Department of Justice's electronic fingerprint submission Live Scan Service ("Live Scan"). The California Attorney General's website at <https://oag.ca.gov/fingerprints> provides information on the procedures for fingerprinting in California through Live Scan and fingerprinting outside of California, the locations in California for fingerprinting and the fingerprint processing fees.

~~(b) For each individual required to be fingerprinted, an applicant shall file with NMLS a copy of the California Department of Justice's Request for Live Scan form as proof of Live Scan completion.~~

(eb) Individuals who cannot be fingerprinted electronically in California must follow the California Department of Justice's procedures for fingerprinting outside of California.

(cd) No license will be issued until the Department of Financial Protection and Innovation receives a response from the California Department of Justice for all individuals required to submit fingerprints under the Debt Collection Licensing Act.

Note: Authority cited: Section 100003, Financial Code. Reference: Sections 100008 and 100009, Financial Code; and Section 11077.1, Penal Code.

7. Section 1850.10 is adopted to read:

§ 1850.10. Information Regarding Individuals who are not Residents of the United States.

(a) In addition to other background information required in the application, applicants must engage a search firm to perform an investigative background report of each individual required to be fingerprinted under the Debt Collection Licensing Act and Sections 1850.7 and 1850.9 of these rules who does not currently reside in the United States or has not resided in the United States for at least ten (10) years. This investigative background report shall be required in addition to fingerprinting.

(1) A copy of the investigative background report shall be filed with NMLS for transmission to the Commissioner.

(2) The search firm must be able to demonstrate that it has sufficient resources and is properly licensed to conduct the background search.

(3) The search firm shall not be affiliated with or related to the applicant or the individual who is the subject of the search.

(4) The report must be in English or if the report is in another language, the report must be translated to English and include a translator's certificate as provided in Section 1850.6.1 of these rules.

(5) The cost of the report shall be paid by the applicant or individual.

(b) The report shall contain the following, at a minimum:

(1) A comprehensive credit report and/or history, including the actual credit report if available, as well as a summary;

(2) Civil court and bankruptcy court records concerning the individual for the past ten (10) years. The search for these records shall include a search of the court data in the country(s), state(s), and town(s) where the individual resided or worked;

(3) Criminal records of the individual, including felonies, misdemeanors and violations (excluding traffic violations). The search for these records shall include a search of court data in the country(s), state(s), and town(s) where the individual resided or worked;

(4) Education records;

(5) Employment history during the last ten (10) years;

(6) All media records during the last ten (10) years referencing the individual.

The search for such records shall include a search of national and local publications, wire services, and business publications. The search of social media may be limited to information related to complaints, allegations or disciplinary matters concerning the individual's debt collection activities; and

(7) Regulatory history, particularly in connection with debt collection activities.

(c) The report shall be accompanied by a search summary letter, which:

(1) Identifies the scope of the search;

(2) Indicates the independence of the search firm from the applicant and the individual who is the subject of the search; and

(3) Identifies an individual from the search firm and the individual's contact information for the Commissioner to contact with questions regarding the report.

(d) If an individual has had a report containing at least the information listed in subsection (b) of this section prepared for another licensing agency within 12 months of the filing of the application, the applicant or individual may request permission from that licensing agency or the search firm to file a copy of that report with the Commissioner through NMLS. If the applicant or individual elects to file a prior report as authorized in this subsection, the applicant or individual shall also attach to the report a statement of no material change to the information in the report with the Commissioner through NMLS. The statement shall include the name of the individual and the license applicant, and be dated and signed by the individual or applicant.

Note: Authority cited: Section 100003, Financial Code. Reference: Section 100009, Financial Code; and 8 U.S.C. Sections 1621, 1641 and 1642.

8. Section 1850.11 is adopted to read:

§ 1850.11. Notices Included with Application.

The following notices required by state and federal law are hereby provided to those completing an application for a debt collector license under these rules:

INFORMATION PRACTICES ACT OF 1977 (California Civil Code Section 1798.17)

(a) The Department of Financial Protection and Innovation of the State of California, Debt Collection Licensing Program, is requesting the information specified in the application for a license as a debt collector.

(b) The Deputy Commissioner for Administration, the Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834, telephone number (916) 445-5541, is responsible for the system of records and shall, upon request, inform individuals regarding the location of the Department of Financial Protection and Innovation's records and the categories of persons who use the information in the records.

(c) The records are maintained pursuant to the Debt Collection Licensing Act (Financial Code Section 100000 et seq.).

(d) The submission of all items of information is mandatory. The Department of Financial Protection and Innovation is required to collect from all applicants social security numbers under Family Code Section 17520, and social security numbers or federal taxpayer identification numbers under Business and Professions Code Section 494.5.

(e) Failure to provide all or any part of the information requested may preclude the Department of Financial Protection and Innovation from approving the license application.

(f) The principal purposes within the Department of Financial Protection and Innovation for which the information is to be used are to determine whether (1) a license, registration, or other authority, as allowed under the law, should be accepted, granted, approved, denied, revoked or limited in any way; (2) business entities or

individuals licensed or otherwise regulated by the Department of Financial Protection and Innovation are conducting themselves in accordance with applicable laws; and/or (3) laws administered by the Department of Financial Protection and Innovation are being or have been violated and whether administrative action, civil action, or referral to appropriate federal, state or local law enforcement or regulatory agencies, as authorized by law, is appropriate.

(g) Any known or foreseeable disclosures of the information pursuant to subdivision (e) or (f) of Civil Code section 1798.24 may include transfers to other federal, state, or local law enforcement and regulatory agencies, including NMLS as a channeling agent to, from, or on behalf of those federal, state, and local law enforcement and regulatory agencies, as authorized by law.

(h) Subject to certain exceptions or exemptions, the Information Practices Act grants an individual a right of access to personal information concerning the requesting individual that is maintained by the Department of Financial Protection and Innovation.

FEDERAL PRIVACY ACT OF 1974 (Public Law 93-579)

(i) In accordance with Section 7 of the Privacy Act of 1974 [found at 5 U.S.C. § 552a note (Disclosure of Social Security Number)], the following is information on whether the disclosure of a social security account number is voluntary or mandatory, by what statutory or other authority the number is solicited, and what uses will be made of it.

(1) The Department of Financial Protection and Innovation is required to collect from all applicants social security numbers under Family Code Section 17520, and

social security numbers or federal taxpayer identification numbers under Business and Professions Code Section 494.5.

(2) A social security number or federal taxpayer identification number is solicited pursuant to one or more of the following authorities: these rules, and Section 100004 of the Financial Code; Section 17520 of the Family Code; and Section 494.5 of the Business and Professions Code.

(3) For all persons disclosing a social security number or federal taxpayer identification number, the number is used to match the information to the names on the list provided by the California Department of Child Support Services under Family Code Section 17520, and the lists of tax delinquencies provided by the California Department of Tax and Fee Administration and the California Franchise Tax Board, under Business and Professions Code Section 494.5. The social security number may be used, in addition to other information provided, to conduct a background investigation of the individual by the California Department of Justice's Identification and Information Branch or by other federal, state or local law enforcement agencies, as authorized by law. The social security number may also be used to respond to requests for this number made by child support agencies.

NOTICE REGARDING TAXPAYER INFORMATION

(i) The California Department of Tax and Fee Administration and the California Franchise Tax Board are authorized to share taxpayer information with the Department of Financial Protection and Innovation. In the event the state tax obligation is not paid by

a licensee, the Department of Financial Protection and Innovation may be required to suspend the license.

Note: Authority cited: Section 100003, Financial Code. Reference: Section 494.5, Business and Professions Code; Sections 1798.17 and 1798.24, Civil Code; Section 17520, Family Code; Sections 100004, 100008, 100009 and 100015, Financial Code; Section 11019.9, Government Code; and 5 U.S.C. section 552a.

9. Section 1850.12 is adopted to read:

§ 1850.12. Challenge Process for Information Entered Into NMLS.

(a) If an applicant or licensee disputes the accuracy or completeness of any material information entered into and maintained by NMLS, the applicant or licensee may submit a written request to the Commissioner to the attention of the Special Administrator, Debt Collection Licensing Program at DebtCollectionLicensing@dfpi.ca.gov.

(b) The request shall include the applicant or licensee's name, unique identifier, a statement of the alleged inaccuracy or incompleteness of the information entered into NMLS, and its materiality, and provide any proof or corroboration available, including copies of official documents or court orders that support the changes requested by the licensee or applicant.

(c) Upon receipt of the request, the Commissioner shall investigate the request, along with any information provided, and determine whether the information entered into NMLS is correctly reflected.

(d) If the Commissioner determines that the information is materially incorrect, the Commissioner shall request the NMLS record to be corrected.

(e) If the Commissioner denies the allegations of material inaccuracy or incompleteness in the NMLS record, the Commissioner shall notify the licensee or applicant in writing.

(f) Within thirty (30) calendar days from the mailing or service of the Commissioner's decision to the licensee or applicant that the information is not inaccurate or incomplete, the licensee or applicant may request a hearing under the Administrative Procedure Act (Government Code section 11500 et seq.) for a determination of whether material inaccuracy or incompleteness exists in the record.

(g) Upon a hearing, if a material inaccuracy or incompleteness is found in any record, the Commissioner shall, within thirty (30) calendar days of notice of the finding, request NMLS to correct the information.

(h) After a hearing is held pursuant to a request described in subsection (f), judicial review of the decision shall be governed by Section 11523 of the Government Code.

Note: Authority cited: Section 100003, Financial Code. Reference: Section 100015, Financial Code; and Section 11523, Government Code.

10. Section 1850.13 is adopted to read:

§ 1850.13. Share Arrangements with Other Government Agencies.

The Commissioner is authorized to share any information or material that has been filed with NMLS with any government agency, including, but not limited to, the California Attorney General, the California Department of Justice, the U.S. Department

of Justice, the Consumer Financial Protection Bureau, the Federal Bureau of Investigation, state, local, or federal regulatory agencies, state attorneys general, and county district attorney's offices. The information or material that is shared with a governmental agency shall be accomplished without the loss of privilege or the loss of confidentiality protections provided by law.

Note: Authority cited: Section 100003, Financial Code. Reference: Sections 100015 and 100016, Financial Code.

11. Section 1850.14 is adopted to read:

§ 1850.14. Commissioner's Finding for Licensure.

The Commissioner's finding required by Section 100012, subdivision (b)(7), of the Financial Code relates to any matter, personal or professional, that may impact a finding regarding the propensity of the applicant, or applicant(s) in the case of affiliates seeking to be licensed under the same license, and their general partners, managing members, principal officers, directors, trustees and individuals owning or controlling ten percent (10%) of the applicant, to operate honestly, fairly, and efficiently when engaging in the business of a debt collector.

Note: Authority cited: Section 100003, Financial Code. Reference: Section 100012, Financial Code.

12. Section 1850.15 is adopted to read:

§ 1850.15. Denial of License Application.

(a) The Commissioner may deny an application for a license for any of the reasons in Section 100012, subdivision (b)(1) through (b)(7) of the Financial Code.

(b) The Commissioner will consider the following factors in deciding whether to deny a license to an applicant, or applicants in the case of affiliates seeking to be licensed under the same license:

(1) The nature and seriousness of the applicant's prior violations involving dishonesty, fraud, or deceit that are substantially related to the qualifications, functions or duties of a person engaged in the business of debt collection.

(2) The harm to consumers from the applicant's prior violations involving dishonesty, fraud, or deceit that are substantially related to the qualifications, functions or duties of a person engaged in the business of debt collection.

(3) The number and frequency of the applicant's prior violations involving dishonesty, fraud, or deceit that are substantially related to the qualifications, functions or duties of a person engaged in the business of debt collection.

(4) The number of prior disciplinary actions taken against the applicant by regulatory agencies in California or other states.

(5) Whether permitting an affiliate or affiliates to be licensed under the same license would violate or facilitate the violation of other laws.

(c) The Commissioner may deny an application for a license based on the prior violations or disciplinary actions of a single affiliate under the application.

Note: Authority cited: Section 100003, Financial Code. Reference: Section 100012, Financial Code.

13. Section 1850.16 is adopted to read:

§ 1850.16. Designated Email Address.

Upon receiving a license, an applicant shall establish a designated email address by registering for a Department of Financial Protection and Innovation Self-Service Portal Account through the Department of Financial Protection and Innovation's website at www.dfpi.ca.gov. The email account shall be established and monitored in accordance with the requirements in Section 331.5 of the Financial Code. By registering the designated email address, the applicant consents to receive information from the Commissioner at that email address, including but not limited to assessment notices.

Note: Authority cited: Section 100003, Financial Code. Reference: Section 331.5, Financial Code.

14. Article 3, Section 1850.30 is adopted to read:

Article 3. Requirement to Maintain Current Information.

§ 1850.30. Notice of Changes.

(a) A licensee shall, upon any change in the information contained in its application for a license, including any change in its policies and procedures, file the changed information with the Commissioner through NMLS.

(b) A licensee shall file the changed information on Forms MU1, MU2, and MU3 as applicable, and any exhibits and supporting documents thereto, and pay the fees, if any, to file the changed information through NMLS in accordance with the procedures for transmission to the Commissioner. Any change that cannot be filed with NMLS or fee that cannot be paid through NMLS shall be filed with or paid directly to the

Commissioner. The NMLS fees for obtaining credit reports and any other NMLS fees shall be paid by the licensee to NMLS through NMLS.

(c) Except as provided in subsection (d) of this section, all changes to the information in the license application shall be filed within thirty (30) calendar days of the date of the occurrence of the event that results in the information becoming inaccurate or incomplete.

(d) A change in the principal place of business identified in a license application to a different street address must be filed at least ten (10) calendar days before the date of the change. The notice to the Commissioner of the change in the principal place of business must be filed with the Commissioner through NMLS and shall include the licensee's name, street address of the new location and date of change, and describe any other existing business being conducted at the new location.

Note: Authority cited: Section 100003, Financial Code. Reference: Sections 100001, 100006.3 and 100018, Financial Code.

15. Section 1850.31 is adopted to read:

§ Section 1850.31. Officers, Directors, Partners, and Other Persons:

Maintenance of Current List with Commissioner: Information Required.

(a) A licensee must at all times maintain on file with NMLS, in accordance with the procedures for transmission to the Commissioner, a current list of principal officers, directors, partners in the case of a partnership, and other persons named on Forms MU1, MU2, and MU3, as applicable.

(b) In the event of any change in the principal officers, directors, partners, or other persons named in the application, a licensee shall, within thirty (30) calendar days

of the date of the change, file an amendment to the application containing the same information in relation to the new person(s) as is required on Forms MU1, MU2, and MU3 and pay the fees, if any, to file the changed information through NMLS.

Fingerprinting fees specified in Sections 1850.7 and 1850.9 of these rules shall be paid by the licensee, and any other fees payable through NMLS, including fees, if any, to file the new or changed information, shall be paid by the licensee to NMLS for transmission to the Commissioner. Any fees that cannot be paid through NMLS shall be paid directly to the Commissioner. The NMLS fees for obtaining credit reports and any other NMLS fees shall be paid by the licensee to NMLS through NMLS. Fees are not refundable.

Note: Authority cited: Section 100003, Financial Code. Reference: Sections 100006.3 and 100018, Financial Code.

16. Section 1850.32 is adopted to read:

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

(a) A licensee that seeks to engage in business at a new branch office or at a new location for an existing branch office must register the new branch office by filing a Form MU3 in accordance with the instructions of NMLS for transmission to the Commissioner within thirty (30) calendar days of the date of engaging in business at the new branch office or new location.

(b) If a licensee intends to conduct business at a branch office under a fictitious business name not already approved by the Commissioner, the licensee shall file with

NMLS a copy of the Fictitious Business Name Statement with the “filed” stamp from the county clerk’s office.

(c) A licensee shall not use a fictitious business name until the Commissioner approves the use of the name.

(d) A licensee shall comply with the laws governing the filing of a fictitious business name set forth in Business and Professions Code Sections 17900 through 17930.

(e) A licensee shall indicate the branch manager as a branch manager on Form MU3, file with NMLS a Form MU2 for the branch manager, and provide the necessary authorizations to enable NMLS to obtain a credit report for the branch manager.

(f) A licensee shall provide on Form MU3 the full web address for the new branch office and any separate website(s) for the fictitious business names and indicate whether the applicant transacts business through the website(s).

(g) Fingerprinting fees specified in Sections 1850.7 and 1850.9 of these rules shall be paid by the licensee, and any other fees payable through NMLS, including fees, if any, to file the new or changed information, shall be paid by the licensee to NMLS for transmission to the Commissioner. Any fees that cannot be paid through NMLS shall be paid directly to the Commissioner. The NMLS fees for obtaining credit reports and any other NMLS fees shall be paid by the licensee to NMLS through NMLS. Fees are not refundable.

(h) The Commissioner may request other information, documentation or detail pertaining to the branch office that cannot be filed through NMLS to be filed directly with the Commissioner.

(i) The Commissioner shall approve or deny the individual designated as the branch manager at the new location and notify the licensee of this decision within ninety (90) calendar days of the licensee's notification of the new location.

(j) If the Commissioner denies the individual designated as the branch manager, the licensee shall, within ten (10) calendar days of the date of receipt of notification of the Commissioner's denial, designate a different individual as the branch manager at the new location. The Commissioner shall approve or deny the different individual as provided in subsection (i) of this section.

(k) A change of the street address of an applicant's principal place of business designated in a license application shall be made in accordance with Section 1850.30(d) of these rules and shall not constitute a new location subject to the requirements of this section.

Note: Authority cited: Section 100003, Financial Code. Reference: Sections 100006.3 and 100018, Financial Code.

17. Article 4, Section 1850.50 is adopted to read:

Article 4. Surety Bond.

§ 1850.50. Surety Bond.

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

(b) The surety bond shall be in the form of the "electronic surety bond form," titled "SURETY BOND, DEBT COLLECTION LICENSING ACT LICENSEE BOND", ESB

Form Version 1 Effective 07/01/2021, NMLS Version: CA-DFPI – 07/01/2021,
incorporated herein by reference in its entirety.

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

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

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

(fd) The surety bond shall not be cancelled, in whole or in part, without at least sixty (60) calendar days' notice to the Commissioner by the surety, bonding, or insurance company.

(ge) The surety bond shall provide that the surety, bonding, or insurance company issuing the bond provide notice to the Commissioner within ten (10) calendar days of service of any action.

Note: Authority cited: Section 100003, Financial Code. Reference: Section 995.320, Code of Civil Procedure; and Sections 100006.3 and 100019, Financial Code.

18. Article 5, Section 1850.60 is adopted to read:

Article 5. Surrender of License.

§ 1850.60. Effectiveness of License for Debt Collector.

A license issued under the Debt Collection Licensing Act is effective until it is revoked or suspended by the Commissioner, or surrendered by the licensee and the surrender has been accepted by the Commissioner pursuant to Section 100014 of the Financial Code and Section 1850.61 of these rules.

Note: Authority cited: Section 100003, Financial Code. Reference: Sections 100014 and 100022, Financial Code.

19. Section 1850.61 is adopted to read:

§ 1850.61. Surrender of License as a Debt Collector.

(a) An application to surrender a license as a debt collector shall be filed on Form MU1, MU2, and MU3 as applicable with NMLS in accordance with the procedures for transmission to the Commissioner.

(b) Prior to surrendering its license, the debt collector shall file ~~directly~~ with the Commissioner through NMLS a plan containing the licensee's detailed proposal for the orderly closure of its debt collection business, including a detailed description of the plan to close out or transfer the licensee's debt collection files; the name and contact information of the person taking over the licensee's debt collection files, if applicable; and the time frame within which the closure or transfer will be completed. Surrender shall not be effective until approved by the Commissioner.

Note: Authority cited: Section 100003, Financial Code. Reference: Sections 100006.3, 100014 and 100022, Financial Code.