

SECOND DRAFT TEXT OF PROPOSED REGULATIONS
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
TITLE 10. INVESTMENT
CHAPTER 3. COMMISSIONER OF FINANCIAL PROTECTION AND INNOVATION

PRO 05-21
DEBT COLLECTION LICENSING ACT

(Current law is shown without underline. The second draft text is shown with underline for additions and strikethrough for deletions.)

SECTION 1. Section 1850 is amended to read:

§ 1850. Definitions.

(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.

(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” has the same meaning as set forth in subdivision (j) of Section 100002 of the Financial Code.

ADD: (i) “Employee” means an individual whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person and whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form or international equivalent, issued by the controlling person.

ADD: (j) “Engage in the business of debt collection”: A person engages in the business of debt collection and is required to be licensed pursuant to section 100001, subdivision (a) of the Financial Code if the person (A) engages in debt collection for a profit or gain, and (B) the activity is of a regular, frequent, or continuous nature. Advertising or otherwise offering the service of debt collection for remuneration constitutes engaging in the business of debt collection.

(k) “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.

(l) "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.

(m) "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.

(n) "Individual" means a natural person.

ADD: (o) "Law firm" means a law partnership, a professional law corporation, a lawyer acting as a sole proprietorship, or an association authorized to practice law.

(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.

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

(r) "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.

SECTION 2. Section 1850.1 is adopted to read:

§ 1850.1 Scope of Licensing requirement.

(a) Employees of debt collectors and employees of entities exempted by Financial Code section 100001, subdivision (b)(1), are not required to be licensed under the Debt Collection Licensing Act when acting within the scope of their employment with a debt collector licensed pursuant to Division 25 of the Financial Code, commencing with Section 100000, or with an entity exempted by Financial Code section 100001, subdivision (b)(1). Employees of subsidiaries and employees of parent companies of a licensed debt collector are not required to be licensed while working on a temporary basis for the licensed debt collector.

(b) The licensing exemption in section 100001, subdivision (b)(1) of the Financial Code applies to the listed entities and their employees acting within the scope of their employment only. The exemption does not apply to parent entities, subsidiaries, or to affiliates.

(c) Original creditors: A creditor, including a provider of non-financial services, seeking, in its own name, repayment of consumer debt arising from a consumer credit transaction between itself, in its own name, and a customer, is not engaged in the business of debt collection, for purposes of licensure under the Debt Collection Licensing Act, unless it meets one or more of the following criteria:

(1) Five percent or more of the creditor's annual revenue generated from consumer credit transactions with California consumers over the previous calendar year, constitutes collection fees, late fees, or any other charges added to the original consumer credit transaction that created the debt. Accrued interest which was a part of the original transaction, and which is charged under the contract regardless of whether the consumer has met the consumer's obligations under the contract, does not constitute a collection fee, late fee, or other charge added to the original consumer credit transaction.

(2) During the previous calendar year, an average of ten percent or more of the creditor's California inventory was repossessed at least once, either by the creditor directly or through a third-party.

(3) The creditor has a monthly average over the previous calendar year of twenty-five percent or more of the gross amount of its California consumer accounts receivable ninety or more days past due.

(d) A person solely servicing debts on behalf of an original creditor, as described in subdivision (c), that are less than 90 days past due and have not been charged off, is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act. For purposes of this section, a debt is 90 days past due when at least one payment has not been fully paid within 90 days of the date that the payment was originally

scheduled to be paid on the debt. For purposes of this section, “charged off” means a debt that has been removed from a creditor's books as an asset and treated as a loss or expense.

(e) Notwithstanding subdivision (c), a healthcare provider, healthcare facility, or hospital is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act if the only debt it collects is on its own behalf and is payment for medical or other services or products it provided.

(f) Notwithstanding subdivision (c), a local, state, or federal government body of the United States is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act when collecting debt owed to a government body. For the purposes of this division, “government body” includes: a state, county, city, tribal, district, public authority, public agency, judicial branch public entity, public institution of higher education, and any office, officer, department, division, bureau, board, or commission thereof.

(g) A person whose debt collection activity is limited exclusively to debt collection regulated pursuant to Division 12.5 of the Financial Code is not required to obtain a debt collector license.

(h) A public utility is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act when acting under the supervision of the California Public Utilities Commission in accordance with its authority under Public Utilities Code section 701.

(i) A person is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act when acting under the authority of the Private Investigator Act, Chapter 11.3 of Division 3 of the Business and Professions Code, commencing with § 7512.

(j) An attorney or law firm engaged in the business of debt collection must hold a debt collection license under this division.

(1) For purposes of determining whether an attorney or law firm engages in the business of debt collection, the following activities do not constitute debt collection:

(A) The representation of a creditor in an action initiated by a debtor plaintiff;

(B) An attempt by an attorney or law firm to collect legal fees and/or costs from its current or former client;

(C) The provision of legal advice regarding debt collection that does not involve communication with any debtor. Allowing others to use attorney or law firm letterhead in communications with debtors constitutes communication with a debtor for purposes of this paragraph.

(2) A debt collection license does not entitle the holder to practice law. A person licensed under this subdivision who references the person's status as an attorney in communications with debtors must be entitled to practice law and must disclose in communications with debtors whether the attorney is licensed to practice law in this state. A law firm licensed under this division who communicates with debtors must employ at least one attorney authorized to practice law.

(3) Revocation or suspension of an attorney's debt collector's license shall not operate to prohibit the attorney from practicing law, including debt collection practice, before any court in the State of California they are otherwise permitted to practice before.

(k) A student loans servicer, as defined by Financial Code section 28104, subdivision (m), is exempt from debt collection licensure for its student loan servicing activities. However, a student loan servicer that collects or attempts to collect defaulted student loans as defined in Financial Code section 28104, subdivision (m), must obtain a debt collection license.

(l) A private nonprofit postsecondary institution is exempt from debt collection licensure.

(m) A person is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act when acting as a licensed repossession agency under the authority of the Collateral Recovery Act, Chapter 11 of Division 3 of the Business and Professions Code, commencing with § 7500).

SECTION 3. Section 1850.2 is adopted to read:

§ 1850.2 Consumer credit transactions.

(a) The following types of debt are not consumer debt within the meaning of section 100002, subdivision (f) of the Financial Code:

(1) Residential rental debt, except COVID-19 rental debt as defined in Section 1179.02 of the Code of Civil Procedure.

(2) Debt owed pursuant to a Homeowners' Association Declaration of Covenants, Conditions, and Restrictions or other equivalent written agreement.

(b) Debt arising from a consumer's acquisition of healthcare or medical services, where payment is deferred, is presumed to be consumer debt within the meaning of section 100002, subdivision (f) of the Financial Code.

(c) The failure of a personal check to clear does not create a consumer credit transaction under the Debt Collection Licensing Act.

SECTION 5. Section 1850.71 is adopted to read:

§1850.71 Document Retention.

(a) Each licensee shall make and preserve a record of any contact with, or attempt to contact, anyone associated with a debtor account, regardless of who initiated the contact and whether the attempt at contact is successful. The record shall include, at a minimum:

(1) the name of the employee making the attempt or who received contact from a person regarding the debtor account, and the name of the person who contacted the licensee (if available).

(2) the date and time of contact.

(3) the name and contact information of the person the licensee is attempting to contact.

(4) a summary of the substance of the contact or message conveyed.

(5) if a call was recorded, the recording shall be retained.

(6) the date, amount, and method of any payments made on the debt.

(b) Subdivision (a) does not apply to contacts made between licensees and debt buyers or creditors.

(c) Each licensee shall keep and maintain the following information:

(1) All employee records related to training, performance, and interactions with debtors.

(2) The records created pursuant to subdivision (a).

(3) All records of fees, interest, and any charges on debtor accounts accrued since acquisition of the account by the licensee.

(4) Records establishing that the licensee is no longer attempting to collect on accounts that have been resolved and that the consumer has been informed of the resolution and that no further collection efforts will be made.

(d) Each licensee shall retain the information in subdivision (c), in a form readily accessible, for at least three years after any of the following, whichever occurred last:

(1) The account has been resolved, and the consumer has been informed that they no longer owe the debt and that no further contact or collection attempts will be made by the licensee, or

(2) the account has been returned to the creditor whether or not payments have been made, or

(3) the account is sold and all collection attempts by the debt collector have ceased.

(e) Where a record is subject to both this section and the regulations adopted pursuant to Division 24 of the Financial Code, the longer retention period applies.