



September 27, 2024

Department of Financial Protection and Innovation
Legal Division
2101 Arena Boulevard
Sacramento, CA 95814
Attn: DeEtte Phelps, Regulations Coordinator

Subject: California Association of Collectors Comments on PRO 01-23, released September 11, 2024

To Whom It May Concern:

The California Association of Collectors (“CAC”) is a not-for-profit California statewide association of collection agencies that collect debts assigned to them for collection purposes by original creditors, governmental agencies, and others. CAC provides educational opportunities and conferences for its members, engages in legislative advocacy efforts on behalf of its members, and offers financial literacy scholarships to high school students. Our organization supported the legislation that created the Debt Collection Licensing Act (Senate Bill 908, Wieckowski, Chapter 163, Statutes of 2020) and is supportive of regulations that implement that Act without imposing an unreasonably costly and excessively burdensome set of requirements on our members.

We appreciate the Department’s continued attempt to clarify the definition of net proceeds and to clarify what information must be submitted with licensees’ annual reports. Although the proposed regulation continues to improve, we have two additional sets of comments and suggestions on the language issued on September 11, 2024. This comment letter is intended to supplement, rather than replace, our earlier comment letters dated March 27, 2024 and July 2, 2024.

PROPOSED SECTION 1850(p)(2)

Comment/Recommendation:

It is unclear to us what entities paragraph (2) is intended to capture. Absent further clarification, we recommend that it be deleted.

Rationale: Proposed Section 1850(p)(1) is clearly intended to cover debt buyers, and we believe that proposed Section 1850(p)(3) is intended to apply to third-party debt collectors. If debt buyers and third-party debt collectors are covered under paragraphs (1) and (3), what entities are covered under paragraph (2)? The way that paragraph is currently worded, it appears to apply to creditors collecting debt on their own behalf. If this is the case, we believe that paragraph (2) should be deleted, on grounds that the Debt Collection Licensing Act was never intended to apply to first party creditors.

We also believe that paragraph (2) is premature. Until the Department finalizes its scope regulations (currently contained in PRO 05-21), proposing to require entities other than debt buyers and third-party debt collectors to submit specified information in annual reports is inappropriate.

PROPOSED SECTION 1850(g) and (h)

Comment/Recommendation:

At present, subdivision (g) and (h) do not appear to request parallel information. Subdivision (g) requests the face value dollar amount of California debtor accounts in the licensee's portfolio in the preceding year and clarifies that the Department is seeking the total amount *owed* (emphasis added) by all California debtors on all California accounts as of December 31st, as specified. Subdivision (h) requests the number of California debtor accounts in the licensee's portfolio as of December 31st of the preceding year, but does not request the number of California debtor accounts on which amounts *are owed*.

At a minimum, we recommend that the Department ensure that subdivisions (g) and (h) are parallel. If (g) refers to accounts on which amounts are owed as of December 31st of the preceding year, (h) should refer to the number of California debtor accounts in the licensee's portfolio as of December 31 of the preceding year *on which amounts are owed*.

However, we also reiterate a request that we have made in the past – namely, that the Department clarify whether it is seeking information only on active accounts in a licensee's portfolio or on all accounts in a licensee's portfolio. Under California case law, debts do not extinguish until and unless an affirmative action is taken to extinguish them. Thus, even if a debt is beyond the statute of limitations for collection, it technically remains *owed*.

Absent further clarification regarding the information being sought in subdivisions (g) and (h), the Department will likely receive inconsistent responses from its licensees. Some licensees will assume that the Department is seeking information only on debts the licensees is actively attempting to collect, while other licensees will assume the Department is seeking information on

all debts, including those on which all collection activities have permanently ceased. We respectfully request that the Department clarify which of these two options it is seeking.

GENERAL CLARIFICATION

In addition to the aforementioned points, we request that the Department amend PRO 01-23 to clarify the way in which it will comply with subdivision (b) of Financial Code Section 100021. That section states, "(b) The individual annual reports filed pursuant to this section shall be made available to the public for inspection." We respectfully request that the Department make individual licensee's annual reports available only to those who have complied with the Public Records Act process, consistent with the way in which it shares individual annual reports submitted by its other financial services licensees.

Thank you for the opportunity to provide these comments.

Please contact Tom Griffin, CAC's legal counsel with any questions you might have about the contents of this letter.