December 12, 2025

VIA EMAIL to regulations@dfpi.ca.gov
Department of Financial Protection and Innovation
Legal Division
Attn: Diana Pha, Regulations Coordinator
651 Bannon Street, Suite 300
Sacramento, CA 95811

Re: Comments on Third Draft Prefiling Text for Proposed Scope Rulemaking under the Debt Collection Licensing Act (PRO 05-21)

Dear Commissioner Hewlett and DFPI Staff:

Public Counsel's Consumer Rights and Economic Justice Project and Consumer Federation of California submit these comments in response to DFPI's invitation for comments on the third draft pre-filing text for the proposed DCLA scope rulemaking.

Our comments focus on DFPI's third draft text (compared to the second draft) and do not endeavor to provide comprehensive feedback on the current regulations. Nonetheless, we urge the Department to consider additional revisions to its regulations so as to exercise DFPI's full authority under the DCLA and better protect California's consumers.

Licensure of Attorneys

We are concerned about ambiguity in the exemption from licensure under Proposed Cal. Code Regs. tit. 10, § 1850.1 (h) ("An attorney collecting a debt on behalf of and in the name of a client solely through activities that may only be performed by a licensed attorney is not subject to licensure under the Debt Collection Licensing Act.").

In our experience, it is not uncommon for California attorneys engaged in "debt collection" within the meaning of the DCLA to engage in conduct that violates state and federal law. It is critically important that DFPI ensure these debt collectors are licensed and strictly regulated under the DCLA and DFPI's authority.

We understand the proposed language is intended as a narrow carveout limited to what is required under separation of powers principles – and not a blanket exception for attorneys who are "debt collectors" engaged in "debt collection." This should be unambiguous in the regulations.

The California Supreme Court's precedent limits DFPI licensing and regulation of attorneys only to the extent that doing so would "defeat or materially impair" the Supreme Court's "inherent authority over the practice of law." (*See In re Attorney Discipline Sys.*, 19 Cal. 4th 582, 593–94 (1998); and *O'Brien v. Jones*, 23 Cal. 4th 40, 44–45, 76 (2000)). At the same time, however, the DCLA requires DFPI licensure of individuals engaged in debt collection activities – without an exemption for attorneys performing those activities.

Accordingly, DFPI should revise the proposed DCLA regulation to make clear that while attorneys who *only* do work that requires a law license do not need to register with DFPI, attorneys must still register if they engage in "debt collection" work that can be done without a license to practice law.

Residential Rental Debt

We are troubled by the proposed changes to § 1850.2(a)(1) relating to residential rental debt. Rent arrears should not be excluded from the definition of "consumer debt"; the FDCPA precedent recognizes residential rent as appropriately subject to consumer-debt protections. *See* Romea v. Heiberger & Assocs., 163 F.3d 111, 115–16 (2d Cir. 1998) (holding that back rent owed under a residential lease is "debt" within 15 U.S.C. § 1692a(5)).

Second, the third draft's deletion of "except COVID-19 rental debt…" moves the rule in the wrong direction and is contrary to the legislature's recognition that COVID-19 rental debt is consumer debt. See e.g., S. Judiciary Comm., Analysis of Assemb. B. 3088, 2019–2020 Reg. Sess., at 7 (Cal. Aug. 29, 2020) (explaining that, under AB 3088, unpaid COVID-19 rent "essentially turns into consumer debt," which the landlord may collect using ordinary civil collection tools, but which can no longer serve as a basis for eviction).

If the regulation excludes rental debt, it should at minimum preserve a carve-out for COVID-19 rental debt and limit any exclusion to collection by the landlord in the landlord's own name and for the landlord's own account, and should not apply where the obligation has been assigned, sold, or placed with a third party for collection.

Original Creditors

The proposed "Original creditors" scope provision would treat an original creditor as not engaged in the business of debt collection for licensure purposes where (1) the person extended the credit for goods or services it provided and (2) it uses a licensed debt collector once the account is more than 90 days past due or has been charged off. Proposed Cal. Code Regs. tit. 10, § 1850.1(c)(1)–(2). DFPI should revise this language to make clear that the "original creditor" treatment applies only when a creditor collects its own debt in its own name, and does not extend to collection performed by a separate entity—such as an affiliate, servicer, shared-services unit, or branded platform—collecting on behalf of another; those entities should be treated as debt collectors subject to licensure, consistent with the FDCPA's treatment of assignees and entities using a different name to collect. See 15 U.S.C. § 1692a(4), (6).

We thank the Commissioner and Department's staff for the opportunity to provide these comments and would welcome the opportunity to discuss them.

Sincerely,

Ghirlandi Guidetti
Senior Staff Attorney
Consumer Rights & Economic Justice Project
PUBLIC COUNSEL

Robert Herrell
Executive Director
CONSUMER FEDERATION OF CALIFORNIA