June 7, 2021

Department of Financial Protection and Innovation
By e-mail to regulations@dfpi.ca.gov
Attn: Sandra Sandoval
300 S. Spring Street, Suite 15513
Los Angeles, California 90013

Re: Comments on Proposed Rulemaking
Under the California Debt Collection Licensing Act (PRO 02/20)

Dear Ms. Sandoval:

This letter is submitted by the California Financial Service Providers ("CFSP") as a comment to the proposal to adopt new regulations under the Debt Collection Licensing Act (the "DCLA") issued by the Department of Financial Protection and Innovation (the "Department") on April 8, 2021 (the "Proposal"). CFSP is a trade association representing business entities licensed under the Consumer Financing Law ("CF Law"). CFSP has been serving our members since 1956, and currently represents over 50 separate business entities holding several hundred licenses issued by the Department. CFSP appreciates the opportunity to comment on the Proposal.

CFSP understands and acknowledges that the Department is under a tight timeframe, mandated by the Legislature, to promulgate a workable regulation to implement the DCLA. CFSP accordingly feels that the bulk of the proposal is sound and reasonable in this regard. These comments seek clarification of certain aspects of the Proposal in order to improve the workability of the final regulation in its implementation by covered persons.

Definitions

CFSP's primary concerns pertain to the need for additional guidance as to the coverage of the proposed regulation.

First, the definitions in Financial Code § 10002(e)-(h) and (j) are not sufficiently clear or detailed to reflect the full reality of consumer credit and payment transactions. We believe that the Department has the authority to provide necessary clarification in this regard. Specifically, guidance is requested as to whether the acceptance of a check or electronic payment by a commercial entity in payment for a good or service constitutes extending credit to the consumer, so that DCLA would applies to efforts to collect on returned checks and other payments? We do not believe this was the intent of the DCLA, and believe that the regulations should so state. For example, is the payment of rent by a check under a residential lease considered a credit transaction for the purposes of the DCLA?

Second, a related question is 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 DCLA? Again, we do not believe this was the intent of the DCLA, and believe that the regulations should so state.

Third, we note that Financial Code § 100001 has no *de minimus* exception to its licensing requirement. We believe that the legislative intent of the DLCA was to license persons who are primarily or largely in the business of collecting delinquent consumer credit transactions. We do not believe the DCLA was intended to require every single person or business entity who might seek to recover such a delinquent obligation to obtain a license under the DCLA. We therefore request the Department to establish one or more to *de minimus* thresholds of activity below which no DCLA license is required.

We note that this question relates directly to the first question posed above. For a retailer, grocer, commercial landlord, retail service provider such as an automobile repair shop or dry cleaner, receiving and collection on returned payments is an everyday occurrence. Accordingly, we would suggest that there may be significant complexity in establishing a reasonable threshold for such purposes. For the same reason, it is clear that such a *de minimus* threshold will greatly relieve the potential burden on California businesses posed by the current unclear definitional language of the DCLA, and will prevent the clogging of the Department's licensing and examination resources in implementing the DCLA.

Fourth, we noticed significant level of potential confusion with regard to the scope of the exemptions in Financial Code §100001(b). Most of our members hold California Finance Lenders' ("CFL" licenses), and such section provides, that the DCLA "shall not apply" to a CFL." However, this section of the DCLA, does not address the complexity of the business ecosystem that surrounding the contemporary consumer financial services reality. Accordingly, specific guidance is requested as to the following 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 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 it originated under a CFL license and sold to an SPV with ownership related to that of 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.

Fifth, we note that the that proposed Section 1850 (b) defines "applicant" as including any "affiliates, and that proposed Section 1850(a) includes any "affiliate" within the coverage of the regulation. However, we note that, as currently proposed, the regulation imposes a number of obligations that apply to the "applicant,' which then would mean that any of the applicant's affiliates would have to meet those obligations even if those affiliates are not seeking licensure or are not required to be licensed under the DCLA. We do not believe that was the intention here, because there are some other specific requirements as to what affiliates must to do if they want a license, or what information about affiliates needs to be provided, which would not be necessary if affiliates were intended to be broadly included in the definition of "applicant." Thus, we would request clarification of this issue in the definitional sections of the regulation.

The above are situations that our members will immediately face upon the effective date of the DCLA. We strongly suspect that there are other, similarly knotty situations that will affect other types of business entities, including banks, and urge the Department to research and consider the addition of provisions to the regulations to address such situations so that there is no uncertainty.

Fictitious Business Names

Proposed Section 1850.7(a)(1)(B) states that the Department's approval is required before an applicant may use a fictitious business name. How will this apply to entities that are currently using fictitious business names? Will they be grandfathered automatically by filing an application? If so, such language should be added to the Proposal. Our suggestion would be 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 any name is disapproved for further use.

Information Reporting

Proposed Section 1850.7(a)(15) requires applicants to report "the total dollar amount of debt collected from consumers as of the prior calendar year-end." This needs clarification. Does this include only third-party collections? Does it include amount collected in connection with non-exempt financial services such as money transmission or check cashing? Does it include proceeds from non-exempt lending activities such as pawn or deferred deposit lending? Does it include collection of returned payments by non-financial service providers such as the entities mentioned above? Should exempt activities such as banking and finance lending be included or excluded from these figures? Similarly, would it include licensees' loans? Bad check collections? More guidance is needed here.

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Application Information Clarity

Next, we note that the NMLS system was designed to process applications from mortgage loan originators. The experience of our members, and of other business entities, has been that the system is thus often inapposite to the acceptance and processing of other types of license applications. We believe the NMLS system is inherently a good idea, a positive step toward rationalizing the current crazy-quite of state-by-state licensing requirements, and will no doubt evolve to work well for all types of license applications. However, it is not there yet. According, additional guidance is requested as to the specifics of the following information requirements:

- 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 engage in the business of debt collection, other financial services, or settlement services:
  - This could be an extremely complicated requirement for larger entities doing business on a nationwide basis. Was that the intention? If so, specific guidance should be provided as what this should look like;
  - Does this include other licensed activities, such as money transmission, check cashing, pawnbroker lending, or CDDTL lending?
- The management chart;
- The requirement for written policies and procedures for compliance with the DVLA, the Rosenthal Act, and the Debt Buyers Act.

Again, CFPS believes that these requirements are all inherently reasonable. However, they represent a significant new burden on the entities that will need to apply for DCLA licenses. Therefore, the more specific guidance that the Department can provide, the better applicants will be able to submit license applications that will satisfy the Department's needs and minimize the chances that an application will be deficient, thereby causing the process to drag on.

Reasons for Adverse Action

Finally, CFSP would request that proposed Section 1850.7(c) should be revised to add a requirement that the Department inform an applicant whose application is denied as to all of the reasons for such denial. This same request applies *mutatis mutandis* to denials of applications to surrender licenses under proposed Section 1850.61(b.

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CFSP reiterates our appreciation for the consideration of these comments by the Department.

Sincerely,

[redacted]

Executive Director