



June 8, 2021

California Department of Financial Protection and Innovation  
Attention: Sandra Sandoval  
300 S. Spring Street, Suite 15513  
Los Angeles, CA 90013

*Via Email (regulations@dfpi.ca.gov)*

Re: Comments on Proposed Rulemaking Regarding Debt Collection Regulation: License Application and Requirements (PRO 02/20)

Dear Ms. Sandoval:

I am writing on behalf of the California Credit Union League (League), one of the largest state trade associations for credit unions in the United States, representing the interests of approximately 230 California credit unions and their more than 11.6 million members.

On April 23, 2021, the California Department of Financial Protection and Innovation (DFPI) proposed to adopt new regulations pertaining to the Debt Collection Licensing Act (DCLA) (Sen. Bill No. 908 (Chap.163, Stats. 2020; Cal. Fin. Code, § 100000, et seq.). Specifically, the proposed rulemaking adds numerous sections to Title 10, Subchapter 11.3, of the California Code of Regulations (CCR) that would adopt the license application and other related requirements applicable to debt collectors subject to licensure.

We believe there are two areas of potential confusion that should be addressed related to the exemption language found in §100001(b); specifically: (1) whether individual employees acting on behalf of a depository institution could be interpreted to fall outside the licensure exemption; and (2) whether the DFPI could be interpreted to have enforcement authority over federally chartered credit unions. We would like to see the regulations clarify the intent of the legislation in these two areas so that they are not subject to misinterpretation.

We respectfully offer the following comments and feedback for your further consideration.

## **Background**

Under §100001(a) of the DCLA, the requirements for licensure state that: “[n]o person shall engage in the business of debt collection in this state without first obtaining a license pursuant to [the DCLA].” “Debt collection” is broadly defined in subdivision (c) to mean “any act or practice in connection with the collection of consumer debt.”

The definition of “debt collector” found in §100002(j) includes: “[a]ny person who, in the ordinary course of business, regularly, on the person’s own behalf or on behalf of others, engages in debt collection.”

With limited exceptions, the DCLA authorizes the DFPI to license, regulate, investigate, and examine such persons.

### **Exemption**

The DCLA, and the licensing obligation in particular, does not apply to certain entities already regulated under other laws. Section 100001(b)(1) states: “Except as provided in paragraph (2), this division shall not apply to a depository institution, as defined in Section 1420...” Paragraph (2) preserves the DFPI’s enforcement authority over violations of the California Rosenthal Fair Debt Collection Practices Act and the Fair Debt Buying Practices Act.

Given that the definition of a “depository institution” under §1420 includes both state and federally chartered credit unions, both would be included in this exemption.

However, we believe the language of the above exemption also raises certain ambiguities that the draft regulations can easily and effectively address. The following outlines our specific concerns:

a. Individual Employees of Exempt Depository Institutions

The class of persons subject to the DCLA and its licensure obligation broadly reaches “any person” who engages in consumer debt collection. Although a depository institution is itself clearly exempt, §100001(b)(1) does not specifically address persons employed by or acting on behalf of an exempt depository institution. As such, it could still be interpreted under the definition that an individual employee would not be excluded and therefore must also comply with the licensure and other requirements of the DCLA.

While it may be argued that an employee of the depository institution is not personally in the business of collecting debts but merely acting as the agent of the depository institution, this is not expressly stated in either the statute or the draft regulations.

b. DFPI Enforcement Authority Over Federal Credit Unions

As previously noted, §100001(b)(2) preserves the DFPI’s enforcement authority to address violations of the California Rosenthal Fair Debt Collection Practices Act or the Fair Debt Buying Practices Act. However, because this enforcement authority is preserved as to otherwise exempt “depository institutions,” which are defined in §100001(b)(1) to include both state and federally chartered credit unions, the implication is that this enforcement authority could extend to federal credit unions as well.

While the DFPI is authorized to license and regulate California state-chartered credit unions, the National Credit Union Administration (NCUA) regulates federal credit unions. As a result, such

an interpretation would be inconsistent with both state and federal credit union law. While it may be argued that this inconsistency alone is sufficient, it remains that the issue is not addressed in either the statute or the draft regulations.

### **Proposed Additional Language for Draft Regulations**

To clarify and address the points indicated above, we propose the following language to be included in the draft regulations:

#### **1. Article 1. Definitions.**

##### **§ 1850.1 Requirements for Licensure.**

(a) The exemption for a depository institution from the provisions of the Debt Collection Licensing Act pursuant to Section 100001(b)(1) of the Financial Code shall also include any employee of the depository institution engaging in the business of debt collection on behalf of the depository institution.

(b) Nothing in Section 100001(b)(2) or 100005(b) of the Financial Code shall be construed to confer enforcement authority with regard to any depository institution not otherwise licensed by the Commissioner.

### **Final Comments**

Thank you for taking the time to consider our concerns on the draft regulations to the DCLA. We believe further clarity is needed in order to avoid any potential misinterpretations regarding the exemption in §100001(b). Thank you for the opportunity to comment on the proposal. If you have any questions regarding our comments, please do not hesitate to contact me.

Sincerely,



Diana R. Dykstra  
President/CEO  
California Credit Union League

cc: Christopher Shultz, Chief Deputy Commissioner  
Edgar Gill, Senior Deputy Commissioner, Corporations and Financial Institutions Division