

June 7, 2021

***By e-mail to [regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov)***

Department of Financial Protection and Innovation  
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 INFIN, A Financial Services Alliance (“INFIN”<sup>1</sup>), the leading national trade association representing the diverse and innovative consumer financial services industry, 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”). The DCLA applies to a variety of financial products and services including check cashing, money transfers, and small-dollar loans. Our members operate in the State of California under the California Financial Institutions Law (“CFL”) and the Deferred Deposit Transaction Law (CDDTL). We appreciate the opportunity to comment on the Proposal.

INFIN recognizes that the Department is mandated by the Legislature to promulgate a workable regulation to implement the DCLA within a limited time frame. Accordingly, we have limited our comments to seeking clarification of certain provisions in order to improve the workability of the final regulation.

### **Definitions**

INFIN’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 the DCLA would apply 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, constitute 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.

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<sup>1</sup> About INFIN, [www.infinalliance.org](http://www.infinalliance.org).

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Third, we note that Financial Code § 10001 has no *de minimus* exception to its licensing requirement. We believe that the legislative intent of the DLCA was to apply to licensed persons who are primarily or largely in the business of collecting delinquent consumer credit transactions. We do not believe the DLCA 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 DLCA. We therefore request the Department establish one or more *de minimus* thresholds of activity below which no DLCA 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 collecting 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 DLCA and will prevent taxing the Department's resources in implementing the DLCA.

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 Financing Law licenses ("CFL" licenses), and such section provides, that the DLCA "shall not apply" to a CFL licensee. However, this section of the DLCA does not address the complexity of the business ecosystem 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 Cashier'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 obligation it purchased from a non-exempt entity, such as a check cashier or CDDTL licensee. This appears to be exempt, but clarification is necessary since the conclusion is not obvious.

The above are situations that our members will immediately face upon the effective date of the DLCA. We strongly suspect that there are other, similarly difficult 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 to eliminate uncertainty.

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### **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.

### **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 amounts 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 deposit lending? Does it include collection of returned payments by non-financial service entities mentioned above? Should exempt activities such as banking and finance be excluded from these figures? Similarly, would it include licensees' loans? Bad check [REDACTED] that more guidance is needed here.

### **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 complicated 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. Accordingly, 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 engaged 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 this the intention? If so, specific guidance should be provided as to 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, INFiN 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

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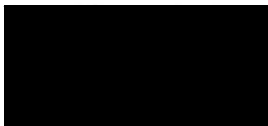
that will satisfy the Department's needs and minimize the chances that an application will be deficient, thereby causing the process to drag on.

**Reasons for Adverse Action**

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

Once again, INFIN appreciates the opportunity to comment on the Proposal.

Very truly yours,

A large black rectangular redaction box covering the signature area.

Edward D'Alessio  
Executive Director