

June 8, 2021



1050 Fulton Avenue #120
Sacramento, California 95825
916.482.2462

By Electronic Submission and Post

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

Re: Comments on Proposed Rulemaking under the California Consumer Financial Protection Law (PRO 02/20)

Dear Commissioner Alvarez:

The Receivables Management Association International (RMAI) is pleased to submit our comments to the Department of Financial Protection & Innovation (DFPI or Department) on the rulemaking for the California Debt Collection Licensing Act (Act) as requested in DFPI's invitation for comments issued on April 8, 2021.

RMAI extends its sincere gratitude to the Department and its staff for our ongoing conversations regarding the new debt collector licensing law which the Department is working on standing up. RMAI is looking forward to the new licensing regimen and feel that this law, by itself, will go a long way in helping with consumer protection in California.

As background, RMAI is the nonprofit trade association that represents more than 575 companies that purchase or support the purchase of performing and nonperforming receivables on the secondary market. RMAI member companies work in a variety of financial service fields, including debt buying companies, collection agencies, collection law firms, originating creditors, brokers, international members, and industry-related product and service providers. RMAI's Receivables Management Certification Program (also referred to as RMCP)¹ and its Code of Ethics² set the "gold standard" within the receivables management industry due to their rigorous uniform industry standards of best practice which focuses on protecting consumers.

Rolled out in 2013, RMAI's Certification Program sets high and robust industry standards that seek to go above and beyond the requirements of state and federal law for the protection of

¹ Receivables Management Association International, *Receivables Management Certification Program* (February 25, 2021), publicly available at <https://rmaintl.org/GovernanceDocument> (last accessed June 7, 2021).

² Receivables Management Association International, *Code of Ethics* (August 13, 2015), publicly available at <https://rmaintl.org/about-rmai/code-of-ethics/> (last accessed June 7, 2021).

consumers.³ While the program was first designed to certify debt buying companies, it has expanded to include certifications for law firms, collection agencies, and vendors (e.g., receivable brokers and process servers). Currently, 427 companies and individuals hold these internationally respected certifications. Presently, all the largest debt buying companies in the United States are RMAI certified and we estimate that approximately 80 to 90 percent of all charged-off receivables that have been sold on the secondary market are owned by an RMAI certified company.

A review of the federal Consumer Financial Protection Bureau's (CFPB's) Consumer Response Portal (the Portal) shows that 97.97 percent of RMAI's certified companies (the vast majority being small businesses) are either complaint-free or have maintained a statistical zero-percent complaint rate on the Portal since the Department started tracking debt collection complaints/inquiries in July 2013. Only 2.27 percent of certified companies have a complaint/inquiry volume of greater than one percent with the remaining 0.76 percent of certified companies being rounded up to a one percent complaint/inquiry rate.

A before-and-after analysis of lawsuits filed against RMAI certified businesses found that after certification, litigation on average decreased by 20.8 percent in the seven-year span from 2012-2018. During the same time-period, litigation against all businesses in the receivables industry increased by 3.1 percent, with Fair Debt Collection Practices Act⁴ (FDCPA), Fair Credit Reporting Act⁵ (FCRA), and Telephone Consumer Protection Act⁶ (TCPA) lawsuits experiencing a 3.5 percent decrease, 13.5 percent increase, and a 26.7 percent increase, respectively. The correlation between RMAI certified businesses and a 20.8 percent decrease in lawsuits, compared to the industry as a whole, reinforces the beneficial effect of the program's high standards and its focus on compliance.⁷

Highlights of the RMAI certification program include a commitment to ongoing education, independent third-party audits, designation of a company Chief Compliance Officer, and compliance with robust standards including:

- Vendor Management: Ensuring that anyone with access to or contact with consumer accounts adheres to the same criteria as the certified company, including assurance of data security systems/policies.

³ RMCP's Mission Statement reads in part, the certification program "is an industry self-regulatory program administered by RMAI that is designed to provide enhanced consumer protections through rigorous and uniform industry standards of best practice."

⁴ 15 U.S.C. 1692 et seq.

⁵ 15 U.S.C. 1681 et seq.

⁶ 47 U.S.C. 227 et seq.

⁷ Pamela Hong, *The Impact of the Receivables Management Certification Program on Litigation*, Receivables Management Association International White Paper (June 2019), publicly available at https://rmaintl.org/wp-content/uploads/2019/06/Litigation_White_Paper.pdf (last accessed June 7, 2021).

- **Data & Documentation Integrity:** Mandating compliance with a comprehensive list of data and documentation requirements that exceeds all state and federal requirements. RMAI certification program maintains unique asset class criteria for auto, credit cards, bankruptcy, judgments, medical, and student loan receivables.
- **Consumer Disputes:** Creating a culture that promotes open lines of communication with consumers to address disputes regardless of the mode of communication the consumer chooses to use. When RMAI's certification standards are viewed in their entirety, they provide a level of consumer protection unseen elsewhere within the receivables industry. The standards include, but are not limited to, requirements that all certified businesses be registered on the CFPB consumer portal, maintain well-defined dispute policies, proactively address issues in credit reports, provide consumers direct access to the CCO, and prohibit the sale or resale of accounts that are currently in dispute or have been identified as fraudulent.
- **Portfolio-Sale Standards:** Ensuring the integrity of account information and transparency in the sale and resale process is paramount. Standards on chain-of-title, due diligence in the portfolio review, and representations and warranties in the purchase-and-sale agreement combine to ensure the integrity of the account information, thereby providing important consumer protections.

The positive impact on consumer credit from RMAI's certification program has been recognized during the CFPB's development of Regulation F over the course of nearly a decade and through three administrations. First in its 2016 Small Business Regulatory Enforcement Fairness Act (SBREFA) review⁸ and again the 2019 notice of proposed rulemaking⁹ as it helps to reinforce our ongoing efforts within the broader industry. Importantly, as original creditors see the value of the certification program, we are seeing an increase in the number of creditors requiring that their approved buyers be RMAI certified.

RMAI'S Comments on Proposed Regulation 02-20

RMAI is a strong advocate for state licensing laws in all 50 states and actively pursues and supports the adoption of such laws in the states that do not license debt collectors. RMAI was excited when Sen. Wickerowski made debt collection licensure a legislative priority in 2019 and

⁸ Consumer Financial Protection Bureau, "Outline of Proposals Under Consideration And Alternatives Considered," (July 28, 2016), fn 85 and 92 (publicly available at http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf (last accessed June 7, 2021)).

⁹ Debt Collection Practices (Regulation F), 84 FR 23274 (May 21, 2019), fn 378, 402, 647, and 743.

2020. RMAI worked very closely with the Senator's staff for over eight months in the framework and development of the California Debt Collection Licensing Act (Senate Bill 908) and issued memorandums of support at both the legislative and executive levels. We are pleased to see the proposed regulations issued by DFPI as we progress towards full implementation of the Act. RMAI respectfully submits the following comments on the proposed regulations for the Department's consideration:

- I. **Section 1850 (Definitions)** – The proposed language is consistent with the statutory language contained in 100000 et seq of the Financial Code and legislative intent. RMAI supports the proposed language.
- II. **Section 1850.6 (Electronic Filings)** – The proposed language is consistent with the authority granted contained in section 100006 of the Financial Code. RMAI supports the proposed language.
- III. **Section 1850.7 (License Application for Debt Collector)** – The proposed language is almost entirely consistent with the statutory language contained in 100000 et seq of the Financial Code and legislative intent. RMAI supports the proposed language with the following changes:
 - (a) **Registered Agent** – In paragraph (a)(2), there is no statutory language which supports the inclusion of the registered agent requirements and it is opposite of legislative intent. For more details, please see Roman numeral IV below.

PROPOSED CHANGE:

~~(2) REGISTERED AGENT: Every applicant shall provide a registered agent for service of process located within the state of California through NMLS on Form MUI. Every applicant shall also file directly with the Commissioner an Appointment of the Commissioner of Financial Protection and Innovation as Agent for Service of Process in accordance with Section 1850.8 of these rules by emailing the completed form to the Debt Collection Licensing Program at DebtCollectionLicensing@dfpi.ca.gov.~~

- (b) **Passports** – In paragraph (a)(6)(A), the proposed language requires both a government-issued identification number and a passport number. RMAI sees no purpose in requiring individuals who do not plan on traveling internationally to obtain a passport to satisfy this requirement. RMAI recommends deleting the passport requirement.

PROPOSED CHANGE:

(A) An applicant shall identify the following individuals through NMLS on Form MU1 in the “Direct Owners and Executive Officers” or the “Indirect Owners” section, as applicable, and provide identifying information, including government-issued identification number and the issuing state ~~and nation~~, ~~and passport number~~ ~~and passport issuing country~~; names used; personal history; employment and other business history; and

- (c) **Vendors** – In paragraph (a)(10)(D), the proposed language is overly and unnecessarily broad. The language essentially asks for the names of all the applicant’s vendors, including “marketing” vendors. RMAI believes DFPI will obtain the information it is looking for if it simply asks for the vendors performing collection activities that require interacting with the consumer. Additionally, that the act of contracting with third parties for collection activities is not static but rather it is dynamic. It is not unusual for accounts to be placed with one third party vendor only to be recalled at a later date and placed with another third party. Consequently, the proposed language should be clarified to only apply to current business relationships.

PROPOSED CHANGE:

(D) Whether and to what extent the applicant intends to use third parties to perform any of its debt collection activities which involves interacting orally or in writing with consumers functions, such as marketing, collecting or any other functions and if so, the names of the third parties and their website address and principal place of business that the applicant has a current business relationship.

- (d) **Policies & Procedures** – In paragraph (a)(13), the proposed language requires an applicant to file a copy of its policies and procedures to demonstrate how the applicant will comply with state and federal laws. RMAI requests that the Department consider allowing RMAI Certified Businesses, which must comply with audited standards more rigorous than the laws referenced in this paragraph, be permitted to submit their certification number with proof of an independent third-party audit in place of the submission of their policies and procedures. The required RMAI standards which list the policies and procedures to be maintained by certified businesses are publicly posted on the RMAI website. We believe this to be a more efficient way of handling this requirement for both the Department and the licensee.

Further, such corporate policies and procedures are often developed at considerable cost and expense and are tailored to the operations of each licensed entity. As such, they often contain proprietary non-public information a licensed entity should not have to disclose to its competitors. RMAI proposes that companies that must submit

their policies and procedures be allowed to mark their submissions as “Confidential,” and that in such instances DFPI prevent their public disclosure.

PROPOSED CHANGE:

(13) POLICIES AND PROCEDURES: An applicant shall file with NMLS a copy of its policies and procedures, demonstrating how the applicant will comply with the Debt Collection Licensing Act, the Rosenthal Fair Debt Collection Practices Act (Civil Code section 1788 et seq.), the Fair Debt Buying Practices Act (Civil Code section 1788.50 et seq.), and these rules, related to consumer protection. Submissions marked as “Confidential” will not be available to the public. Alternatively, an applicant who holds a “Certified Receivables Business” (CRB) designation with the Receivables Management Association International may list their certification number and proof of an independent third-party audit of their compliance in lieu of filing their policies and procedures.

- (e) **Branch Offices** – In paragraph (a)(16), DFPI provides requirements for branch offices. RMAI has a concern that “registration” sounds like “licensure.” In fact, some states do not “license” debt collectors, they “register” debt collectors. The legislative intent that was part of the negotiations was not to create a separate stand-alone process for branch offices – in fact, it was the exact opposite. That was the reason why the text in the statute was very careful to not use the term license or register. In fact, the only reference in the statute was to a single application which reads “every application shall include the location of the applicant’s principal place of business and all branch office locations” (emphasis added).

As discussed during the negotiations on SB 908, the concept of licensing branch offices (apart from the main office) was somewhat common when states first started to license collection agencies in the mid-20th century. This made sense given the lack of technological sophistication for oversight. However, given the incredible amount of technology associated with modern oversight, states are beginning to reconsider the value of maintaining separate requirements for branches and questioning whether they really provide any additional consumer protection. Based on this dialogue, the author limited the requirements as it related to branches. It should be noted that at the Fall 2020 Conference of the North American Collection Agency Regulatory Association (NACARA), the association that represents government agencies that regulate debt collectors, there was discussion among the regulators regarding the significance of SB 908 not containing excessive requirements for branch offices and it was perceived as a potential model for other states to follow. The intent was not to treat them as separate and apart from the main application.

To “register” each branch office on NMLS certainly feels a lot like getting a license for each one. Once on NMLS, each branch location will have a license number and an

expiration date which will need to be renewed each year. We also suspect that a separate fee will be required as that is the case with other states.

One item not addressed is the need to clarify that someone who is working from home remotely does not constitute a “branch office.”

PROPOSED CHANGE:

(16) BRANCH OFFICE: An applicant shall include the address of ~~register~~ its branch offices along with the name of any branch managers in the application by filing with NMLS a Form MU3 for each branch office.

~~(A) An applicant that intends to conduct business at a branch office under a fictitious business name shall file with NMLS a copy of the Fictitious Business Name Statement with the “filed” stamp from the county clerk’s office.~~

~~(BA) An applicant shall not use a fictitious business name for a branch office until the Commissioner approves the use of the name.~~

~~(CB) An applicant shall indicate each branch manager as a branch manager on Form ~~MU3~~ MU1 and file with NMLS a Form MU2 for each branch manager.~~

~~(D) An applicant shall provide for each branch office through NMLS on Form MU3 the full web address(es) for the branch office and any separate websites for the fictitious business names, and indicate whether the applicant transacts business through the website(s).~~

~~(EC) The Commissioner may request other information, documentation or detail pertaining to a branch office that cannot be filed through NMLS to be filed directly with the Commissioner.~~

~~(D) An employee of the applicant who works remotely from home is not considered a “branch office.”~~

- (f) **Total Dollar Amount** – In the first bullet of paragraph (a)(15), DFPI is asking for the “total dollar amount of debt collected from consumers in the prior calendar year” to be used to determine the appropriate surety bond. Since many corporations operate nationally with California consumers representing only a fraction of their accounts, RMAI does not feel that the total dollar amount collected nationally should have any consequence on what that company needs to carry for a surety bond to protect California residents. RMAI requests that this requirement be based on debt collected from California consumers. This is consistent with the legislative intent contained in section 100021 of the Financial Code.

PROPOSED CHANGE:

- *The total dollar amount of debt collected from California consumers as of the prior calendar year-end. The information is required to determine whether a higher surety bond amount may be required pursuant to California Financial Code section 100019, subdivision (e)(2).*

- (g) **Amendments** – In paragraph (d), the proposed language requires any amendment to the application be filed within 10 calendar days. The statutory requirement contained in section 100018(a) of the Financial Code provides 30 days. RMAI requests that this language be amended to reflect the statutory requirement.

PROPOSED CHANGE:

(d) FILING AN AMENDMENT: In the event of a change to the information in the application, or the exhibits or supporting documents, the applicant shall file an amendment to the Form MUI, MU2, or MU3 through NMLS in accordance with the procedures in Sections 1850.30, 1850.31 and 1850.32 of these rules. Prior to the issuance of a license, any amendment to an application shall be filed within ~~ten (10)~~ thirty (30) calendar days of the event requiring the amendment.

- IV. **Section 1850.8 (Appointment of Commissioner as Agent for Service of Process)** – This proposed section is opposite of legislative intent. The initial version of SB 908, which was introduced on February 3, 2020, contained a proposed section 90010 which authorized the irrevocable appointment of the commissioner to “receive service of any lawful process in any noncriminal judicial or administrative proceeding.” This language was deleted in the second version which was introduced on April 15, 2020 and nor did it reappear in the May 26, 2020, June 18, 2020, August 10, 2020, August 13, 2020, or August 24, 2020 versions of the bill. The very language quoted above is now used in the proposed rule.

The reason for its removal can be captured in an industry redline of the February 3, 2020 version of SB 908 dated March 3, 2020 where it was stated: “CAC/RMAI does not understand the purpose of this provision. To our knowledge, no other state requires a similar provision. It would unnecessarily place DBO in a massive administrative role and subject the agency to liability for no reason. If the Commissioner wants to monitor litigation against licensees, the Commissioner could use a commercially available product such as Web Recon to achieve the same purpose in a much more efficient and economical manner without the additional liability. This is the same product the CFPB uses.”

Additionally, the filing of suit against a business related to a strict liability statute, such as the FDCPA, TCPA, FCRA, California Rosenthal Act, or the California Fair Debt Buying Practices Act, in no way suggests any wrongdoing as these statutes are frequently used by trial attorneys to extort settlements knowing that most businesses find it cheaper to settle than to take a case to trial. In the end, what benefit does this provide DFPI or the Commissioner in the furtherance of their duties that cannot be achieved through a commercially available product such as Web Recon at far less expense?

- V. **Section 1850.9 (Fingerprints and Background Checks)** – The proposed language is consistent with the statutory language contained in 100000 et seq of the Financial Code and legislative intent. RMAI supports the proposed language.
- VI. **Section 1850.10 (Information Regarding Individuals who are not Residents of the United States)** – The proposed language is not referenced in the statutory language contained in 100000 et seq of the Financial Code nor was it a part of the extensive negotiations on the bill. While RMAI understands the need for such a report, it nonetheless finds certain requirements of this proposed section extreme with ostensibly no benefit to DFPI or no bearing on licensure. In fact, in some cases, DFPI is asking for more information on foreign applicants than it is on U.S. applicants. For example, what bearing does “education records” have on an application? We also note that some of what is being sought is through a United States centric lens of availability and that some information, such as credit reports, may not be available in other countries. RMAI suggests that DFPI revisit this section and only require information that is directly relevant to the application and comparable to what is requested of U.S. applicants.
- VII. **Section 1850.11 (Notices Included with Application)** – The proposed language is not referenced in the statutory language contained in 100000 et seq of the Financial Code nor was it a part of the extensive negotiations on the bill. That being said, its inclusion is appropriate and RMAI supports the proposed language.
- VIII. **Section 1850.12 (Challenge Process for Information Entered into NMLS)** – The proposed language is consistent with the statutory language contained in 100000 et seq of the Financial Code and legislative intent. RMAI supports the proposed language.
- IX. **Section 1850.13 (Share Arrangements with Other Government Agencies)** – The proposed language is consistent with the statutory language contained in 100000 et seq of the Financial Code and legislative intent. RMAI supports the proposed language.
- X. **Section 1850.14 (Evidence of Financial Responsibility)** – The proposed language is consistent with the statutory language contained in 100000 et seq of the Financial Code and legislative intent. RMAI supports the proposed language.

- XI. **Section 1850.15 (Denial of License Application)** – The proposed language is consistent with the statutory language contained in 100000 et seq of the Financial Code and legislative intent. RMAI supports the proposed language.
- XII. **Section 1850.16 (Designated Email Address)** – The proposed language is consistent with the statutory language contained in 100000 et seq of the Financial Code and legislative intent. RMAI supports the proposed language.
- XIII. **Section 1850.30 (Notice of Changes)** – RMAI simply notes that paragraph (a) is an incomplete sentence with missing content. With that exception, the proposed language is consistent with the statutory language contained in 100000 et seq of the Financial Code and legislative intent. RMAI supports the proposed language.
- XIV. **Section 1850.31 (Officers, Directors, Partners, and Other Persons: Maintenance of Current List with Commissioner: Information Required)** – The proposed language is consistent with the statutory language contained in 100000 et seq of the Financial Code and legislative intent. RMAI supports the proposed language.
- XV. **Section 1850.32 (New Branch Office Registration or Change in Location of Existing Branch Office)** – The proposed language is inconsistent with the statutory language contained in 100000 et seq of the Financial Code and legislative intent. Please see related discussion above in paragraph III (e) inclusive of proposed changes.
- XVI. **Section 1850.50 (Surety Bond)** – The proposed language is mostly consistent with the statutory language contained in 100000 et seq of the Financial Code and legislative intent. RMAI supports the proposed language with the following changes which were contained in the statutory language or part of the legislative intent:

(a) All surety bonds, amendments, cancellations, notices of claims, and information related to surety bonds such as riders and endorsements shall be filed with NMLS for transmission to the Commissioner.

(b) The surety bond shall be in the form of the “electronic surety bond form,” titled “SURETY BOND, DEBT COLLECTION LICENSING ACT LICENSEE BOND”, ESB Form Version 1 Effective 07/01/2021, NMLS Version: CA-DFPI – 07/01/2021, incorporated herein by reference in its entirety.

(c) For purposes of obtaining a license, an applicant shall initially file a surety bond of at least \$25,000.

(d) The Commissioner may set a higher minimum surety bond amount for a licensee based on the total dollar amount of consumer debt collected by the licensee in California. Upon notification by the Commissioner of the new surety bond amount, the licensee shall

file the new surety bond with NMLS. If the Commissioner adopts a higher minimum surety bond amount for a licensee, it shall be based on an adopted public schedule which details the thresholds and bond values.

(e) The Commissioner may periodically change the amount of a licensee's surety bond based on any changes to the total dollar amount of consumer debt collected by the licensee in California.

(f) The surety bond shall not be cancelled, in whole or in part, without at least sixty (60) calendar days' notice to the Commissioner by the surety, bonding, or insurance company.

(g) The surety bond shall provide that the surety, bonding, or insurance company issuing the bond provide notice to the Commissioner within ten (10) calendar days of service of any action.

(e) When the Commissioner requests a new bond, a licensee may provide the commissioner a refundable deposit in the amount of twenty-five thousand dollars (\$25,000) in lieu of the bond while the licensee pursues a new bond.

XVII. **Section 1850.60 (Effectiveness of License for Debt Collector)** – The proposed language is consistent with the statutory language contained in 100000 et seq of the Financial Code and legislative intent. RMAI supports the proposed language.

XVIII. An important provision within the legislative negotiations on SB 908 was the inclusion of a Debt Collection Advisory Committee which was incorporated in section 100025 of the Financial Code. We noted that there was no reference to this committee or its role in the regulations. Pursuant to section 100025, this committee “shall advise the commissioner on matters relating to debt collection or the debt collection business, including proposed fee schedules and the mechanics and feasibility of implementing requirements proposed in regulations.” RMAI requests that this Committee be added to the proposed regulations. We suggest the following language:

Section 1850.70 (Debt Collection Advisory Committee) The Commissioner will establish a Debt Collection Advisory Committee to advise the commissioner on matters relating to debt collection or the debt collection business, including proposed fee schedules and the mechanics and feasibility of implementing requirements proposed in regulations.

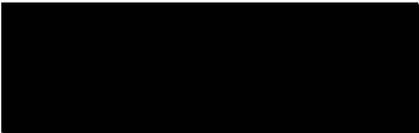
Conclusion

As an advocate of state licensure laws and supporter of SB 908, RMAI is excited to see the active development of these regulations and soon the launch of debt collection licensure in the State of California. As an active participant in the development of the debt collection licensure

statute, RMAI believes that DFPI has done a very good job in the development of a regulatory framework which supports the statute. With the modifications mentioned above, RMAI is very supportive of the Department's proposed regulations.

RMAI sincerely appreciates the opportunity to comment on the proposed regulations. Please do not hesitate to contact me if you need further clarification on RMAI's comments.

Sincerely,



Jan Stieger,
Executive Director