



October 5, 2021

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

Via Email (regulations@dfpi.ca.gov)

Re: Comment on Proposed Second Rulemaking Under Debt Collection Licensing Act (PRO 05-21)

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 license application form and procedures for applying for a debt collection license under the Debt Collection Licensing Act (DCLA) (Sen. Bill No. 908 (Chap.163, Stats. 2020; Cal. Fin. Code, § 100000, et seq.) (Original Proposed Regulations). Based on initial comments received, on June 23, 2021, the DFPI proposed further amendments to the proposed regulations (First Modifications). On August 19, 2021, the DFPI solicited comments to seek further input from stakeholders for its second rulemaking on topics including the scope of DCLA as related to several key definitions (Invitation for Comments).

General Comments

The League previously provided comments on June 8 and July 12, 2021 wherein the League expressed concern about two areas of potential confusion 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 strongly reiterate our position that urges the DFPI to resolve these ambiguities by addressing them in the draft regulations.

Once again, we respectfully offer the following comments and feedback for your further consideration.

Specific Responses to Potential Topics for Rulemaking

Part I. Scope of the DCLA

Definitions:

A. The DCLA defines several terms in Financial Code section 100002, including “debt,” “debt collection,” “person,” “consumer credit transaction,” “debt collector,” and “debt buyer.” Which of these definitions, if any, are unclear? Are the definitions of these terms the same as those in the Rosenthal Act and FDBPA?

We believe that there are several terms that should be defined as DCLA implementing regulations are developed; for example, the DCLA’s definitions of “person,” “debt collection,” and “debt collector.” These terms, in particular, remain unclear as to whether an individual employee of a debt collector that is engaging in the collection of debts on behalf of the employer would need to be individually licensed, in addition to the employer entity. Moreover, clarification is specifically needed as to whether the individual employees of an otherwise exempt depository institution would be covered by the exclusion applicable to the institution itself, or if such individuals must comply with the licensure and other requirements of the DCLA.

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.

Moreover, 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...”

As noted in our previous comment letters, the class of persons subject to the DCLA and its licensure obligation broadly reaches “any person” who “engages in consumer debt collection.” Absent clarification, this could be broadly interpreted to mean that an employee’s actions taken on behalf of its employer with regard to debt collection (e.g., managing call centers, sending letters and account statements, making outbound phone calls, writing policies, supervising staff who do these things, etc.) would be deemed a violation of the DCLA unless the individual employee also obtains a license and meets the other requirements of DCLA. Such an interpretation would be unduly burdensome for employers and employees alike, both in terms of determining the point at which any particular staff member has taken actions sufficient to warrant licensure and compliance with the DCLA, as well as in managing the logistical challenges of individual compliance set forth under the proposed regulations. Such an interpretation also fails to recognize basic agency principles.

Moreover, for an otherwise exempt depository institution, this interpretation would lead to an entirely unworkable result. 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. We ask the DFPI to adopt language to address this uncertainty.

B. The DCLA states that “[n]o person shall engage in the business of debt collection in this state without first obtaining a license pursuant to this division.” Are regulations needed to clarify the term “engage in the business of debt collection”?

As noted above, a number of different activities fall within the overall scope of collecting debts, ranging from direct consumer contact to administrative and support activities to vendor support. Clarification is needed to determine at what point a person is deemed to be engaged in the business of debt collection and at what point those activities are merely ancillary to the collection of debt by another person.

C. The DCLA defines a debt collector as “any person who, in the ordinary course of business, regularly, on behalf of that person or others, engages in debt collection.” Are regulations needed to clarify the term “in the ordinary course of business” or “regularly”?

For the reasons noted above, we believe that further clarification is needed in this area, particularly as it relates to employees, as well as to the use of third-party vendors for products and services related to the process of debt collection.

Therefore, we urge the DFPI to provide further clarification by defining every significant term that promulgates the DCLA.

Exemptions:

D. Financial Code section 100001, subdivisions (b)(1) and (c) provide exemptions from the DCLA. Is further clarification needed regarding which entities or transactions are exempt?

Our response has been largely set forth above and in our previous comments. We believe that further clarification is needed regarding the issue of exemption. While it is our belief that this was never the intent of this legislation, the lack of clarity found under DCLA could inadvertently sweep credit union employees under the DCLA umbrella and subject them to burdensome and unnecessary regulations. To that end, we strongly urge the DFPI to resolve this ambiguity by addressing it in the draft regulations and confirming that the exemption for a depository institution §100001(b)(1) extends to any employee engaging in the business of debt collection on behalf of the depository institution.

Enforcement Authority:

F. The DCLA grants the Department authority to enforce the Rosenthal Act and the FDBPA against persons required to be licensed under the DCLA and persons expressly exempt from licensure, including certain federally regulated entities. Is further clarification needed regarding against whom the Department can enforce the Rosenthal Act and the FDBPA?

§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 the intent of both state and federal credit union law. While it may be argued that this inconsistency alone is sufficient, it remains unaddressed in either the statute or the draft regulations.

For this reason, we believe further clarification is needed regarding the DFPI's enforcement authority as to the California Rosenthal Fair Debt Collection Practices Act and the Fair Debt Buying Practices Act.

Proposed Additional Language for Draft Regulations

We proposed the following language to be included the draft regulations:

1. Article 1. Definitions.

§ 1850.1 Requirements for Licensure.

(a) (i) An individual shall not be deemed a “debt collector” within the meaning of Section 100002(j) of the Financial Code to the extent that the individual is an employee engaged in debt collection, as defined by Section 100002(i), on behalf of his or her employer.

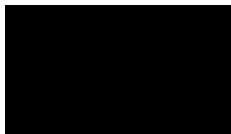
(ii) The exemption for a depository institution from the provisions of the Debt Collection Licensing Act pursuant to Section 100001(b)(1) of the Financial Code shall also include any employee of the depository institution engaging in the business of debt collection on behalf of the depository institution.

(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

We reiterate our appreciation for consideration of our concerns by the DFPI. We believe further clarity is needed in order to avoid any potential misinterpretations regarding the exemption in §100001(b). We trust you will carefully consider our views and recommendations. If you have any questions regarding our comments, please do not hesitate in contact me.

Sincerely,



Diana R. Dykstra
President and CEO
California Credit Union League

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