

**October 5, 2021**

Department of Financial Protection and Innovation  
Legal Division

Attn: Sandra Sandoval, Legal Analyst  
300 South Spring Street, 15th Floor  
Los Angeles, CA 90013

Via Electronic Mail to: [regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov)  
[REDACTED]@dfpi.ca.gov

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

Dear Ms. Sandoval,

On behalf of the Electronic Transactions Association (“ETA”), the leading trade association for the payments industry, thank you for the opportunity to share our thoughts regarding the second proposed debt collection regulations. During the comment period regarding the initial proposed regulations, ETA recommended that the “final regulations should clearly state that the depository institution exemption referenced in Section 100001-(b)(1) of the Debt Collection Licensing Act also applies to subsidiaries and affiliates of depository institutions.”<sup>1</sup> In this letter, we reiterate the importance of this clarification.

### **Depository Institutions**

Beginning January 1, 2022, the California Department of Financial Protection and Innovation (“DFPI”) will require all debt collectors to be licensed under the California Debt Collection Licensing Act (“DCLA”), Senate Bill No. 908.<sup>2</sup> Importantly, Section 100001(b)(1) of the Act exempts depository institutions, defined as “any FDIC-insured bank” from the licensing requirements. However, the licensing requirement does not exclude affiliates and subsidiaries of FDIC-insured banks. If affiliates and subsidiaries need to be licensed, they would be subject to DFPI oversight, including investigations, audits, periodic reporting requirements, examinations, and fines and penalties for violations.

A bank’s structure should not be the factor that ultimately determines whether its activities subject it to state debt collector licensing. Under the rule as written, a FDIC-insured bank does not need to be licensed as a debt collector. But, if the bank has certain servicing activities performed by an affiliate or subsidiary, it must be licensed as a debt collector.

These affiliates and subsidiaries are also regulated by the Office of the Comptroller of the Currency (“OCC”), the Consumer Financial Protection Bureau (“CFPB”), and others, just like the parent bank, and are subject to federal examinations and oversight. Therefore, DFPI oversight would be duplicative.

The OCC, for example, supervises and examines national banks by conducting on-site reviews, providing ongoing supervision of the bank’s operations, and regularly meets with bank management and board of directors. The OCC also takes enforcement action against banks that engage in risky practices or do not comply with their rules and regulations.

---

<sup>1</sup> <https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/06/Electronic-Transactions-Association.pdf>

<sup>2</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200SB908](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB908)

A credentialed national bank examiner has the following responsibilities:

- maintains an up-to-date understanding of the condition and risk profile of the bank,
- identifies risks and responds in an appropriate and timely manner,
- considers the risks posed by significant activities or affiliates, including affiliates or lines of business subject to the primary supervision of another regulator, in determining the bank's ratings and risk assessment,
- maintains responsibility for ongoing supervision of the bank and oversees the execution of examination plans,
- updates the OCC's supervisory information systems to reflect the bank's current risk profile and condition,
- maintains ongoing and effective communication with bank management and the board,
- keeps the supervisory office informed about the status of each assigned bank,
- establishes and maintains points of contact with domestic and foreign banking supervisors and other regulatory agencies, as appropriate,
- implements OCC and supervisory office directives,
- takes actions to require banks to address deficiencies, or recommends such actions to the supervisory office, and
- follows up on bank management's actions to address deficiencies and outstanding enforcement actions.

DFPI's proposed rule would also require the sharing of significant personal information of licensee principal officers and others, including their social security numbers and fingerprints. National banks already follow an in-depth application process to be chartered as an OCC-supervised bank, that includes character requirements as well as comprehensive background checks of the bank's organizers, senior executive officers, senior officers, directors, principal bank shareholders, and general managers of federal branches or agencies. In this application, the OCC must consider experience, competence, and integrity, and may also consider a person's character, financial ability, or willingness to direct or lead a bank's business in a safe, sound, and legal manner. The OCC also closely examines the backgrounds of filers whose previous experience contributed to a failed or "troubled" financial institution or when other facts may raise questions about competence, character, or personal or fiduciary integrity. These background checks include information from:

- Credit Bureaus
- Federal Bureau of Investigation
- Federal and state regulators of banks and other entities
- Internal Revenue Service
- Publicly-available online resources, including the "Interagency Biographical and Financial Report"
- FinCEN
- Enforcement Action Report System, an OCC database of historical criminal referral information

The OCC may also perform additional background checks when deemed appropriate, including making a request for background information from:

- U.S. Commodity Futures Trading Commission
- State and local law enforcement agencies
- Federal Trade Commission
- Local courts
- National Association of Securities Dealers
- U.S. Securities and Exchange Commission

Most investigations also include fingerprint checks and “IRS Tax Check Waiver” forms. Indeed, changes in directors and senior officers of a national bank or federal savings association require notice that includes fingerprinting of any individual that hasn’t been fingerprinted within the prior three years.

Unlike other debt collectors, national banks have examiners that are assigned and solely dedicated to the examination of their operations, and even may reside on site in pre-pandemic environments. DFPI examinations would be duplicative and will only serve to distract the DFPI from the main target of the law and licensing requirements - California debt collectors with no federal oversight.

Therefore, the final regulations should clearly state that the depository institution exemption referenced in Section 10001(b)(1) of the Debt Collection Licensing Act also applies to subsidiaries and affiliates of depository institutions.

\* \* \*

We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any aspect of our comments, please contact me or ETA Senior Vice President, Scott Talbott at [Stalbott@electran.org](mailto:Stalbott@electran.org).

Respectfully Submitted,



Max Behlke

Director, State Government Relations  
Electronic Transactions Association

 | [mbehlke@electran.org](mailto:mbehlke@electran.org)