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Via Email Only To regulations@dfpi.ca.gov

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

Re: Comment Letter in Response to Invitation for Comments on Proposed Second Rulemaking under the Debt Collection Licensing Act

Dear Ms. Sandoval:

McGlinchey Stafford appreciates the opportunity to submit comments in response to the Department of Financial Protection and Innovation's (Department) Invitation for Comments on Proposed Second Rulemaking under the Debt Collection Licensing Act issued on August 19, 2021 regarding anticipated regulations implementing the Debt Collection Licensing Act ("the Act"). We suggest clarification of the definitions in and exemptions from the Act to avoid potential licensing violations by entities engaged in certain activities as discussed below.

Issue 1 – Definitions

Under the Act, a "debt collector" is defined as any person who, in the ordinary course of business, regularly, on behalf of that person or others, engages in debt collection, and includes a debt buyer. "Debt collection" means any act or practice in connection with the collection of consumer debt. A "debt buyer" means a person or entity that is regularly engaged in the business of purchasing charged-off consumer debt for collection purposes, whether it collects the debt itself, hires a third party for collection, or hires an attorney-at-law for collection litigation. "Debt buyer" does not mean a person or entity that acquires a charged-off consumer debt incidental to the purchase of a portfolio predominantly consisting of consumer debt that has not been charged off.

Based on a plain reading of these definitions, an entity that owns loan accounts is subject to licensure only if it collects those accounts for itself, or if it purchases and holds predominantly charged-off accounts. An entity is not subject to licensure for purchasing or holding predominantly current accounts. An entity is also not subject to licensure for passively purchasing or holding loan servicing rights.

While we believe this outcome is clear, we are aware that in the mortgage context the Department has taken the position that a loan holder that engages a third party to service its loans, but maintains master servicing

rights, is subject to the mortgage servicing license requirement even though it does not actively service loans.[1] We assume the Department does not have an equivalent policy basis to take a similarly broad approach to the debt collection license requirement because the entity conducting the actual collection activity would be licensed, and the California legislature has clearly outlined when a passive entity requires licensure as a debt buyer. The Act expressly requires a license to purchase and hold predominantly charged-off accounts, regardless of whether the holder collects the accounts itself or engages a third party to collect them, but does not contain a similar provision with respect to current accounts. It therefore follows that a license is not required to purchase or hold predominantly current loans but not collect them, or to purchase or hold servicing rights to loans. However, if the Department intends to take a different approach than the plain language would indicate, we request that the Department clarify this approach prior to the deadline to submit a license so that companies are able to avoid potential licensing violations by an entity acting in reliance on the statutory language. We recommend the Department clarify that owners of loan accounts that do not otherwise meet the definition of a "debt buyer," and that engage third parties to collect their accounts, are not required to be licensed. We also recommend the Department clarify that purchasers and holders of servicing rights to loans are also not required to be licensed.

Issue 2 – Scope of Exemptions

An entity is exempt from licensure under the Act if it is licensed under one of several enumerated laws including the Residential Mortgage Lending Act ("RMLA") and the Real Estate Broker Law ("REBL"). Both of those laws authorize a licensee to service mortgage loans. As such, we understand that a mortgage servicer conducting mortgage servicing activities pursuant to one of those licenses is exempt from the collection license requirement for its related debt collection activity.

However, the RMLA and REBL do not address loan purchasing. As such, there is potential ambiguity in the Act regarding whether an RMLA or REBL licensee that purchases a portfolio of predominantly charged-off accounts would be exempt from licensing. Because the language of the Act does not limit the exemption to activities within the scope of the RMLA or REBL, we believe that an RMLA or REBL licensee should conclude that a debt collection license is not required for any of its activities. This is consistent with a common legislative and regulatory agency policy that a company licensed with a particular agency should not need to obtain duplicate licenses that cover multiple aspects of its business. We believe this should apply here because any entity that already holds one of the licenses enumerated in the law is already subject to the supervisory oversight of the Department. However, we ask that the Department confirm the scope of the exemptions or advise prior to the deadline to submit a license application if the Department will take a contrary position. Otherwise, if the Department does take a contrary position in the future, those licensees engaged in purchasing charged-off accounts could be subject to enforcement action despite their good faith reading of the Act. To avoid this potential harm, we suggest the Department clarify that entities licensed under one of the laws enumerated in the Act are exempt from the debt collection license requirement for all of their activities.

[1] *See, e.g.*, *In re Amerifirst Financial, Inc*. (Settlement dated August 30, 2017); *In re United Mortgage Corp*. (Accusation dated May 4, 2016); *In re GMH Mortgage Services LLC* (Accusation dated November 14, 2016).

Sincerely,

McGlinchey Stafford PLLC

Robert W. Savoie

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