

July 11, 2021



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By Electronic Submission to regulations@dfpi.ca.gov

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

Re: Comments on the Debt Collection Licensing Act – 17 Day Comment Period (PRO 02/20)

Dear Sir or Madam:

The Receivables Management Association International (RMAI) is submitting additional comments to the Department of Financial Protection & Innovation (DFPI) on the 17 Day Comment Period for the Debt Collection Licensing Act (PRO 02/20).

RMAI appreciates the changes DFPI has incorporated to-date on the proposed regulation as a number of the issues RMAI highlighted in our original submittal dated June 8, 2021 were partially or fully addressed. However, two of our most significant concerns were not addressed: (1) Branch Offices and (2) Service of Process.

Since RMAI provided significant content and analysis on these two items in our June 8th letter, we will simply repeat our concerns listed below. However, we will note that both matters share a similar connection in that they both go against the express legislative intent of the act. These items were of such high importance to RMAI and the industry that they were expressly limited in statutory construction (Branch Offices) and negotiated out of the bill in its entirety (Service of Process).

RMAI would respectfully suggest that if DFPI wants to have this expanded authority, DFPI should pursue it through statutory change rather than attempting to do something that runs counter to the legislative intent of the act.

Repeating our concerns from RMAI's June 8th letter:

- I. **Section 1850.7 (License Application for Debt Collector)** – 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 take a look at 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 potential clarification 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.~~

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

~~(C) 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."~~

- II. **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.”

RMAI would add that the filing of suit against a business related to a strict liability statute, such as the FDCPA, TCPA, FCRA, CA Rosenthal Act, or the CA 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?

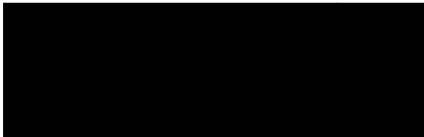
As an advocate of state licensure laws and supporter of SB 908, RMAI is excited to see the active development of these regulations and soon the launch of debt collection licensure in the State of California. As an active participant in the development of the debt collection licensure statute, RMAI believes that DFPI has done a very good job in the development of a regulatory

framework which supports the statute. With the several modifications mentioned above, RMAI is very supportive of the Department's proposed regulations.

RMAI would respectfully request a meeting with DFPI, industry stakeholders, and the legislative author to discuss the Branch Office and Service of Process issues if no further edits to the rules are considered.

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,

A large black rectangular redaction box covering the signature of Jan Stieger.

Jan Stieger,
Executive Director