December 20, 2021

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

Sent via electronic mail to regulations@dfpi.ca.gov

RE: PRO 01-21

Dear Ms. Sandoval:

On behalf of the American Fair Credit Council ("AFCC"), the leading trade association representing the debt settlement industry, we appreciate the opportunity to submit comments in response to the proposal by the Department of Financial Protection and Innovation ("the DFPI" or "the Department") to adopt regulations implementing the California Consumer Financial Protection Law. As the trade association representing an industry whose members are committed to consumer protection, the AFCC is fully aligned with the objectives of the Department's proposal, which aims to "facilitate oversight of registrants and detect risks to California consumers."

Our comments in response to the DFPI's proposal focus on two areas for which public input has been specifically requested by the Department: (1) proposals for annual reporting requirements that were not included in the draft rules but that would help the DFPI better understand the risks and benefits of the covered products for California consumers; and (2) the potential impact of the draft rules on the ability of California businesses to compete with businesses in other states.

Better Understanding of the Risks and Benefits of the Covered Products for California Consumers

Section 51(b) of the DFPI's proposed rules articulates a series of annual reporting requirements for registrants who offer or provide debt settlement services to California consumers. These reporting requirements, which include the total number of consumers a registrant has enrolled in a debt settlement program, the average number and total amount of debts enrolled, and the average and total amount of fees per program participant paid over the term of their contract with the registrant, will provide the DFPI with a holistic view of the significant value debt settlement companies provide to tens of thousands of Californians each year. We anticipate that the data collected by the Department will corroborate, as independent academics have concluded[1], that:

- Debt settlement providers save California consumers hundreds of millions of dollars each year by securing settlements that substantially reduce the amount they owe;
- Debt settlement providers provide Californians with $2.62 of debt reduction for every $1 in fees assessed;
- More than 75% of Californians who enroll in a debt settlement program achieve a settlement within the first six months of their program; and
- California consumers who enroll in debt settlement programs realize meaningful savings, inclusive of fees.

The AFCC respectfully submits that, to better understand the risks and benefits of debt settlement, the DFPI should exercise its authority to collect similar data from providers of other products and services that may be used by Californians in financial hardship to address their debt burdens. This effort should, at a minimum, include the collection and analysis of California consumer outcomes in credit counseling, bankruptcy, creditor loan modifications and short-term consumer loans, as these products and services are typically viewed as competitors to debt settlement. A side-by-side comparison of the risks and benefits, as well as the costs and burdens, of these products and services would provide essential context to an understanding of consumer outcomes in debt settlement. The AFCC would respectfully suggest that only through the collection of similar data across all of the options available to consumers in financial hardship can the DFPI fully understand, in context, the benefits and costs associated with debt settlement.

Potential Impact of Draft Rules on the Ability of Businesses to Compete

The annual reporting requirements in Section 51(b) of the DFPI's proposed rule will require debt settlement registrants to submit highly detailed and, in many cases, very sensitive information. While the AFCC understands the Department's objectives in collecting these data, much of the information required represents proprietary data for companies that operate in a highly competitive, national marketplace. The ability of debt settlement companies to effectively negotiate on behalf of consumers with their creditors to obtain reductions in their debt and to compete with other providers could be threatened by the public disclosure of these sensitive pieces of information. It is therefore of the utmost importance that the DFPI maintain the confidentiality of individual registrants' data submissions, including ensuring that any aggregated, anonymized reporting of registrant data cannot be reidentified to any individual debt settlement company. We

---

[1] Regan, G. *Options for Consumers in Crisis: An Economic Analysis of the Debt Settlement Industry, California Edition 2021*. Heming Morse, LLP. Retrieved from https://americanfaircreditcouncil.org/wp-content/uploads/AFCC-2020-California-Data.pdf.

would be pleased to discuss with you, in greater detail, the availability, relevance and sensitivity of industry-specific information at your earliest convenience.

The AFCC appreciates the DFPI's consideration of our input and stands ready to provide any additional information, data, or perspective that may be of value as the Department finalizes its rulemaking and implements a registration regime for our industry. Along those lines, we were pleased to work with Assemblywoman Wicks over the last two years on her legislation concerning the debt settlement industry. AB 1405 (Chapter 454, Statutes of 2021) provides significant consumer protections for debt settlement clients in California.

We look forward to working alongside you to ensure that Californians in financial hardship continue to have access to the significant benefits provided by the debt settlement industry and are afforded the important customer protections to which AFCC member companies are committed.

Sincerely,

[redacted]

Denise Dunckel
Chief Executive Officer

100 W. Cypress Creek Road Suite 700 Ft. Lauderdale, FL 33309 888-657-8272
www.americanfaircreditcouncil.org