



December 2, 2021

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

Via Email (regulations@dfpi.ca.gov)

Re: Comment on Second Modifications to Proposed Regulations Under Debt Collection Licensing Act (PRO 02/21)

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). On November 15, 2021, the DFPI proposed a second set of modifications in response to further comments received (Second Modifications).

General Comments

The League has previously provided comments on this matter, and we wish to draw your attention once again to the specific concerns presented in our prior comment letters. In particular, there are two areas of potential confusion related to the exemption language found in §100001(b); specifically: (1) whether individual employees acting on behalf of a licensed debt collector employer must be individually licensed and, more specifically, whether employees of an otherwise exempt depository institution are covered by the depository institution's 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.

We respectfully offer again the following comments and feedback for your further consideration:

- **Individual Employees of Exempt Depository Institutions**

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." This means 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.) could be deemed a violation of the DCLA unless the individual employee also obtains a license and meets the other requirements of the DCLA before acting on the employer's behalf.

This ambiguity raises particular concern in the case of a depository institution that is otherwise exempt from the DCLA's licensing requirements. While it may be argued that an employee of the exempt depository institution is not personally in the business of collecting debts but merely acting as the agent of the depository institution employer, it remains that this is not expressly stated in either the statute or the draft regulations. The language of the statute, absent clarification, leaves the door open for an interpretation that would exempt employers but not their individual employees.

The League continues to call on the DFPI to clarify this matter in the draft regulations.

- **Enforcement Authority**

Another area of significant confusion is in regard to the possibility that the DFPI may have enforcement authority over federally chartered credit unions. As indicated in our previous comments, §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 would 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 both state and federal credit union law. While it may be argued that this inconsistency alone is sufficient, it remains that the issue is not addressed in either the statute or the draft regulations.

Because of the inconsistency within the statute, it is essential that the DFIP provide further clarification in the draft regulations.

- **Proposed Additional Language for Draft Regulations**

In our previous letters, 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.

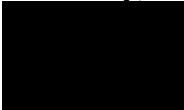
(b) Nothing in Section 100001(b)(2) or 100005(b) of the Financial Code shall be construed to confer enforcement authority with regard to any depository institution not otherwise licensed by the Commissioner.

We continue to call on the DFPI to include such language in the draft regulations to help clarify and address the points indicated above.

Final Comments

The League believes that further clarity is needed in order to avoid any potential misinterpretations regarding the exemption in §100001(b). We thank you for the opportunity to provide these comments and look forward to continuing to work with the DFPI on this issue. If you have any questions regarding our comments, please do not hesitate to contact me.

Sincerely,



Dianã R. Dykstra
President and CEO
California Credit Union League

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