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The California Association of Collectors ("CAC") is a not-for-profit California statewide association of collection agencies, which collect debts assigned to them for collection purposes by original creditors, debt buyers and governmental agencies. CAC provides educational opportunities and conferences for its members, and it engages in legislative advocacy efforts on behalf of its members.

Throughout 2020, CAC worked very closely with Senator Robert Wieckowski and his staff in negotiating the provisions of SB 908, the Debt Collection Licensing Act ("Act"). These efforts culminated in CAC sending a letter of support for SB 908 to Governor Newsom.

CAC has reviewed the Proposed Rulemaking under the California Consumer Financial Protection Law: Consumer Complaints (PRO 03-21) issued by the Department of Financial Protection and Innovation ("DFPI") and, assuming the DFPI anticipates applying the proposed regulations in PRO 03-21 to collection agencies, offers the below comments to the DFPI's Proposed.

General Comments.

Generally, the obligations of PRO 03-21 are inconsistent with the requirements mandated by, and the complaint processes established by, the CFPB and existing law. The processes outlined in PRO 03-21 for covered persons are overly burdensome, costly and, in this strict liability environment, will potentially expose collection agencies to substantial damages. Standardization and consistency are paramount in the development of an effective and useful consumer protections.

In order to provide clarity and consistency with the reporting processes, the DFPI should manage a complaint portal that receives consumers' complaints, and not "inquiries" (the definition of which is nebulous and ambiguous), and is consistent with the terminology utilized by the CFPB. In directing complaints to its portal, the DFPI will have the ability to pull analytics from consumer complaints, including but not limited to complaint types and frequency.

As propose, the rules will result in a considerable increase in the number of disputes, inquiries and complaints that will be made against collection agencies. Combining this with the detailed investigation and reporting requirements regarding the disputes, inquiries and complaints will be a significant burden to the collection agencies, most of which are small businesses with a limited number of employees, and will add to the cost of their operations.

Comments to Specific Sections.

1. Rule 1071: Definitions.

- Rule 1071(a)**.** The definition of "Complaint" is extremely broad. The definition includes "any expression of dissatisfaction… regarding a financial product or service…." Also, this definition includes the acts, omissions, decisions, conditions, or policies of a covered person or service provider. Under this definition, complaints will include expressions of dissatisfaction for the conduct of third parties – service providers and possibly others. Additionally, "service providers" is an undefined term. This definition could be interpreted to include expressions of dissatisfaction regarding the acts of the creditor assigning the debt to the collection agency. Further, this definition fails to distinguish between expressions of dissatisfaction regarding the subject debt and the acts of the covered person in attempting to collect the debt. A dispute concerning the debt is different from a complaint concerning the collection activity of a collection agency. Given the strict liability imposed by SB 908, this definition is problematic.

- Rule 1071(b). The definition of "Complainant" includes a representative or other individual with authority to act on the consumer's behalf. Will the representative or other individual be required to provide documentation to establish the authority to act for the consumer? There are companies, most notably credit repair organizations, which, as a critical part of their business model, continuously submit complaints (to debt collectors, the CFFB and others) for the sole purpose of attempting to "wear down" the collection agency to the point that it elects to delete a reported account. These complaints are usually baseless, are often asserted against accounts the consumer did not intend to dispute and are repeated even after the reported account has been deleted. These complaints will inappropriately inflate the number of complaints reported to the DFPI. The proposed rules do not permit the covered person to differentiate between legitimate and frivolous complaints.

- Rule 1071(e). The definition of "inquiry" is rather broad and, based on the proposed requirements for tracking "inquiries," PRO 03-21 will impose unrealistic requirements on covered persons. For example, when a consumer who wants to make a payment (in part of in full) asks how much is owed or to whom the payment should be made (e.g., either the collection agency or the owner of the debt), will the covered person be required to treat that as an "inquiry" under the proposed regulations?

- In actual practice, tracking "inquiries" will be burdensome on the DFPI and covered persons. A complaint portal maintained by the DFPI should be the sole source of actual complaints or disputes with regards to the actions of covered persons.

- Rule 1071(f). The definition of "Inquirer" includes a representative or other individual with authority to act on the consumer's behalf. Will the representative or other individual be required to provide documentation to establish the authority to act for the consumer?

2. Rule 1072: Complaint Processes and Producers

- Section 1072: Second Paragraph. This paragraph states that the DFPI may review the complaint process. Has the DFPI determined when, or on what periodic basis, this review will occur?

- Section 1072(a)(1)(G). This section requires the covered person to permit the complainant to submit documentation with the complaint. Will the covered person be required to accept any unlimited number of documents or pages? Based on experience, some complainants will attempt to flood the covered person with documentation. Many, if not most, collection agencies are small businesses. Requiring these small businesses to modify their websites to comply with this section and to accept unlimited documentation could prove costly.

- Section 1072(a)(2). This section unrealistically limits the information that a covered person may seek. For example, when investigating an account to match it (or not) to specific consumer, collection agencies often ask the consumer for other information (e.g., the name of the creditor, the account number of the creditor, other phone numbers, prior addresses, etc.) to match the consumer to the debt. Additionally, collection agencies also ask whether the consumer has used another name. A consumer's name can change due to a marriage, a divorce, and other reasons. And, a consumer may use a nickname or middle name (e.g., "Thomas" v. "Tom"; "John" v. "Jack"; and Steph Curry's first name is actually Wardell).

- Section 1072(a)(3). This section requires that a notice alerting a consumer to the process for submitting a complaint must be included in all written communications (except SMS and MMS messages) to consumers. The language of the notice is unspecified and no form is provided, which would be helpful in this strict liability environment. Mandating the inclusion of this notice on all written communication is unnecessary, can be confusing and may be misleading. For example, will this notice be required on letters confirming the receipt of payments, letters confirming the satisfaction of the account, letters confirming the deletion of the account or letters confirming the receipt of cease-and-desist instructions? Also, this notice will further crowd the first letters to consumers. An example of such a letter is attached.

- Section 1072(a)(5) – Part 1. The requirement in this section for a collection agency to return a voicemail message within 24 hours is unrealistic. Most collection agencies are small businesses, with a limited number of employees. Many collection agencies have only a handful of employees and some are one-person agencies. A 24-hour requirement is simply unworkable. Also, regardless of the size of the collection agency, mandating a 24-hour call back is unrealistic. How can this requirement be met when the message is left on the day before the weekend or a holiday? What if the compliance person in a smaller company is out for other reasons (e.g., family or health reasons)? In a smaller company, what will happen if there is an illness or a death? Larger companies often have a limited number of people who address disputes, given the array and complexity of compliance issues and the strict liability environment. For the many reasons identified above, these compliance people may

not always be available for a 24-hour turnaround. Five business days is far more realistic.

- Section 1072(a)(5) – Part 2. This section could have tremendous unintended consequences. This section requires a collection agency to return a call to a consumer who leaves a voicemail message. If this section will be interpreted to require the collection agency to leave a voicemail for the consumer in the event the consumer does not answer the call, that will be a substantial shift in the practices of many collection agencies. Because leaving voicemail messages for consumers expose collection agencies to substantial damages in the event of an inadvertent third-party disclosure, many collection agencies have elected not to leave voicemail messages. It can be costly, very costly, to leave a voicemail message. For that reason, this section cannot be interpreted to require the collection agency to leave a voicemail message.

- Section 1072(a)(6). Collection agencies do not negotiate the contract that gave rise to the debt at issue. The original creditor does that. DFPI is asked to confirm that, under these circumstances, the requirements of this section do not apply to collection agencies.

- Section 1072(a)(7). What is the basis for the four-year period in this section? That is expansive given that the statute of limitation under Rosenthal and the FDCPA is one year.

- Section 1072(b)(1)-(4). Please see the above comments to Section 1072(a)(5) regarding the 24-hour (or one-day) response requirement. Those comments apply to the one-day requirement in this section. Additionally, the FDCPA restricts the communication that a debt collector may have with a consumer within thirty days after a consumer submits a written complaint. The requirement to respond in this section may be construed as a violation of the FDCPA that could pose collection agencies to substantial damages.

- Section 1072(c)(1). Collection agencies are not the owners of the debt they collect. Accordingly, disputes regarding the debt are referred to the creditor (i.e., the owner of the debt) to review the account and confirm whether the debt is accurate. The requirement of this section does not reflect the realities of the review of disputed debt.

- Section 1072(c)(2). The DFPI is asked to confirm whether the third party referenced in this section includes the creditor (or other owner of the account) which assigned the debt to the debt collector for collection.

- Section 1072(d)(3). For the operational reasons addressed elsewhere in these comments, the response time in this section needs to be fifteen calendar days.

- Sections 1072(e)(1) and 1072(e)(1)(A). Instead of requiring additional communication to extend the time period from fifteen calendar days to forty-five calendar days, the rule should simply refer to one, thirty-day time period.

- Section 1072(e). What is the basis for the requirement of maintaining the records relating to a complaint for five years? This is far greater time period than the three-year period required by the CFPB. Also, based on the statute of limitations set forth in Rosenthal and the FDCPA, five years is excessive.

- Section 1072(h). Requiring an annual complaint report is sufficient. Mandating quarterly reports is excessive and burdensome to small businesses. These rules will result in a significant increase in the number of disputes, inquiries and complaints, especially from unscrupulous actors who claim to be working for the benefit of consumers. What may be intended as a shield will be used as a sword. Coupling the increase in disputes, inquiries and complaints with quarterly reporting is unnecessary and, as noted above, burdensome. Additionally, making these reports public will unreasonably cause reputational damage since collection agencies are not afforded the opportunity to distinguish between the types of disputes, inquiries and complaints nor permit collection agencies to identify certain disputes, inquires and complaints as frivolous.

- Section 1073(b). This section requires collection agencies to return a voicemail message within 24 hours. Please see the above comments to Section 1072(a)(5).

- Section 1073(c)(7). What constitutes a sufficient "response"? Will an acknowledgment of receipt be sufficient? Also, the timeframe (fifteen days) to respond is too short. AB 531, which became effective on July 1, 2022, requires debt collectors to provide documentation supporting the debt within thirty days. The statutory standard should control.

CAC appreciates the opportunity to provide these comments to PRO 03-21. Please contact Tom Griffin, CAC's legal counsel (or), with any questions you may have regarding the above comments.

Respectfully Submitted,

Cindy Yaklin, Legislative Co-Chair
California Association of Collectors