

July 5, 2022



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By Electronic Submission and Post

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

Re: Comments on Proposed Rulemaking under the California Consumer Financial Protection Law: Consumer Complaints and Inquiries (PRO 03/21)

Dear Commissioner Hewlett:

The Receivables Management Association International (RMAI) is pleased to submit our comments to the Department of Financial Protection & Innovation (DFPI or Department) on its proposed rulemaking concerning consumer complaints and inquiries related to the California Consumer Financial Protection Law (Act) as requested in DFPI's invitation for comments issued on May 20, 2022.

As background, RMAI is the nonprofit trade association that represents approximately 600 companies that purchase or support the purchase of performing and nonperforming receivables on the secondary market. RMAI member companies work in a variety of financial service fields, including debt buying companies, collection agencies, collection law firms, originating creditors, brokers, international members, and industry-related product and service providers. RMAI's Receivables Management Certification Program (also referred to as RMCP)¹ and its Code of Ethics² set the "gold standard" within the receivables management industry due to their rigorous uniform industry standards of best practice which focuses on protecting consumers.

Rolled out in 2013, RMAI's Certification Program sets high and robust industry standards that seek to go above and beyond the requirements of state and federal law for the protection of consumers.³ While the program was first designed to certify debt buying companies, it has expanded to include certifications for law firms, collection agencies, and vendors (e.g., brokers and process servers). Currently, 468 companies and individuals hold these internationally respected certifications.

¹ Receivables Management Association International, *Receivables Management Certification Program* (February 3, 2022), publicly available at <https://rmaintl.org/GovernanceDocument> (last accessed June 17, 2022).

² Receivables Management Association International, *Code of Ethics* (August 13, 2015), publicly available at <https://rmaintl.org/about-rmai/code-of-ethics/> (last accessed June 17, 2022).

³ RMCP's Mission Statement reads in part, the certification program "is an industry self-regulatory program administered by RMAI that is designed to provide enhanced consumer protections through rigorous and uniform industry standards of best practice."

Presently, all the largest debt buying companies in the United States are RMAI certified, and we estimate that approximately 80 to 90 percent of all charged-off receivables that have been sold on the secondary market are owned by an RMAI certified company.

A review of the federal Consumer Financial Protection Bureau's (CFPB's) Consumer Response Portal (the Portal) shows that 97.97 percent of RMAI's certified companies (the vast majority being small businesses) are either complaint-free or have maintained a statistical zero-percent complaint rate on the Portal since the Department started tracking debt collection complaints/inquiries in July 2013.⁴ Only 2.27 percent of certified companies have a complaint/inquiry volume of greater than one percent with the remaining 0.76 percent of certified companies being rounded up to a one percent complaint/inquiry rate.

A before-and-after analysis of lawsuits filed against RMAI certified businesses found that after certification, litigation on average decreased by 20.8 percent in the seven-year span from 2012-2018. During the same time-period, litigation against all businesses in the receivables industry increased by 3.1 percent, with Fair Debt Collection Practices Act⁵ (FDCPA), Fair Credit Reporting Act⁶ (FCRA), and Telephone Consumer Protection Act⁷ (TCPA) lawsuits experiencing a 3.5 percent decrease, 13.5 percent increase, and a 26.7 percent increase, respectively. The correlation between RMAI certified businesses and a 20.8 percent decrease in lawsuits, compared to the industry as a whole, reinforces the beneficial effect of the program's high standards and its focus on compliance.⁸

Highlights of the RMAI certification program include a commitment to ongoing education, independent third-party audits, designation of a company Chief Compliance Officer, and compliance with robust standards including:

- Consumer Disputes: Creating a culture that promotes open lines of communication with consumers to address disputes regardless of the mode of communication the consumer chooses to use. When RMAI's certification standards are viewed in their entirety, they provide a level of consumer protection unseen elsewhere within the receivables industry. The standards include, but are not limited to, requirements that all certified businesses be registered on the CFPB consumer portal, maintain well-defined dispute policies, proactively address issues in credit reports, provide consumers direct access to the CCO, and prohibit

⁴ See infographic: https://rmaintl.org/rmai_ftp/Complaints-Infographic.pdf (last accessed June 17, 2022).

⁵ 15 U.S.C. 1692 et seq.

⁶ 15 U.S.C. 1681 et seq.

⁷ 47 U.S.C. 227 et seq.

⁸ Pamela Hong, *The Impact of the Receivables Management Certification Program on Litigation*, Receivables Management Association International White Paper (June 2019), publicly available at https://rmaintl.org/wp-content/uploads/2019/06/Litigation_White_Paper.pdf (last accessed June 17, 2022). See also infographic: https://rmaintl.org/rmai_ftp/Litigation_Infographic.pdf.

the sale or resale of accounts that are currently in dispute or have been identified as fraudulent.

- **Vendor Management:** Ensuring that anyone with access to or contact with consumer accounts adheres to the same criteria as the certified company, including assurance of data security systems/policies.
- **Data & Documentation Integrity:** Mandating compliance with a comprehensive list of data and document requirements that exceeds all state and federal requirements. RMAI's certification program maintains unique asset class criteria for auto, credit cards, bankruptcy, judgments, installment, medical, and student loan receivables. Counting all asset classes, RMAI requires 206 data and document elements for the purchase and collection of debts.
- **Portfolio-Sale Standards:** Ensuring the integrity of account information and transparency in the sale and resale process is paramount. Standards on chain-of-title, due diligence in the portfolio review, and representations and warranties in the purchase-and-sale agreement combine to ensure the integrity of the account information, thereby providing important consumer protections.

The positive impact RMAI's certification program has had on consumers has been recognized by the CFPB during the development of Regulation F over the course of nearly a decade and through three administrations. First in its 2016 Small Business Regulatory Enforcement Fairness Act (SBREFA) review,⁹ again with the 2019 notice of proposed rulemaking,¹⁰ and during numerous presentations. The CFPB's support helps to reinforce our ongoing efforts within the broader industry. It is worth noting that as more creditors see the value of the certification program, RMAI is seeing an increase in the number of creditors requiring that their approved buyers, collection agencies, and law firms be RMAI certified.

RMAI'S Comments on Proposed Regulation 03-21

RMAI is a strong advocate of open lines of communication between creditors, debt collectors, and consumers. When complaints or concerns are not addressed to a consumer's satisfaction, RMAI supports the use of government sponsored complaint lines to assist consumers. As such, RMAI recognizes the important role the Department was entrusted in section 90008 of the Financial Code to establish reasonable procedures to ensure regulated entities provide timely responses to consumers regarding complaints and inquiries.

⁹ Consumer Financial Protection Bureau, "Outline of Proposals Under Consideration And Alternatives Considered," (July 28, 2016), fn 85 and 92 (publicly available at http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf (last accessed June 7, 2021)).

¹⁰ Debt Collection Practices (Regulation F), 84 FR 23274 (May 21, 2019), fn 378, 402, 647, and 743.

To-date, the single most comprehensive consumer complaint database that exists within the United States is the CFPB's Consumer Complaint Database¹¹ that collects complaints from all 50 states, the District of Columbia, and U.S. territories through an online complaint portal,¹² by telephone, written mail, or by referral. This portal is a one-stop complaint registry that is advertised and promoted by state and federal regulators, state and federal legislators, state attorneys general, consumer advocates, financial service providers, and state and national trade associations, not to mention through public service announcements and print and visual media.

The complaints made on the CFPB portal are publicly accessible and searchable by numerous filters, including by:

- Date
- Product
- Sub-product
- Issue
- Sub-issue
- Consumer complaint narrative
- Company's response
- Company
- State
- ZIP code
- Tags
- Manner the complaint was submitted
- Date sent to company
- Whether the company provided a timely response

The CFPB has been immensely successful in the management and oversight of the consumer complaint portal. In 2022 alone, the CFPB has budgeted \$208 million towards consumer education, rulemaking, and handling of consumer complaints which represents around 30% of the Bureau's overall budget.¹³ Since launching the complaint portal, the CFPB has processed 344,281 complaints or questions from California consumers spanning all financial services and boasts a 98.7 percent timely response rate to the consumer from the business community since 2019 which is up 0.7 percent when measured from the launch of the portal in 2011.¹⁴

¹¹ <https://www.consumerfinance.gov/data-research/consumer-complaints/>

¹² <https://www.consumerfinance.gov/complaint/>

¹³ CFPB Annual Performance Plan and Report, and Budget Overview (February 2022), page 12 (publicly available at https://files.consumerfinance.gov/f/documents/cfpb_performance-plan-and-report_fy22.pdf).

¹⁴ Statistics are measured from June 28, 2022 utilizing the CFPB Complaint Database.

Primary Recommendation to DFPI

RMAI respectfully recommends that the Department not attempt to create a new complaint collection process at the state-level. California will never have the resources or capability to match what the CFPB is already successfully managing. Instead, RMAI respectfully suggests that the Department seek to collaborate with the CFPB where the Department can gain additional control and management of the complaints already being submitted on the CFPB portal from California residents. RMAI believes that this creative collaboration would be the first of its kind related to sharing consumer complaint data and addressing the complaints at the state level. This could be a model for other states to follow. This would allow the Department to maximize their limited resources in the analysis of the CFPB data, work with consumers and businesses in addressing valid complaints, and engage in enforcement where warranted. The business community does not need another complex and comprehensive complaint process that contains different requirements, different response deadlines, and different expectations in order to address the same issues as the CFPB. Such a system will only create massive confusion within corporate compliance departments.

RMAI believes the Department has a more reasonable alternative that would be far more effective in carrying out the purpose of the proposed rule, less burdensome for both consumers and businesses, and significantly more cost-effective if they collaborated with the CFPB in utilizing the CFPB's current complaint portal.

Secondary Recommendation to DFPI

If the Department does not see the benefit of collaborating with the CFPB or the CFPB does not wish to engage in this type of collaboration with the Department, RMAI would recommend the Department create a California Consumer Complaint Portal and Database managed by the Department that follows the same timelines as the CFPB portal. The structure created in this proposed rule is overly complex and complicated, and while we are sure it was not intentional, it will ultimately guarantee: (1) unintentional violations by companies attempting to manage multiple compliant processes and (2) a complete inability of small businesses to comply with the requirements contained therein.

Tertiary Recommendations to DFPI

If the Department proceeds with the establishment of a California-based consumer complaint process similar to the proposed rule, RMAI would strongly recommend the following items be addressed (while RMAI has more recommendations than those highlighted, we are focusing on the direst of concerns, which are listed in no particular order):

- (1) ***Response Times*** – The proposed rules contain a number of required response times (i.e., 1-day, 3-day, and 7 day) that fall well below the 30-day response time required by the CFPB

and the Rosenthal Act and 15-day response time required by the California Fair Debt Buying Practices Act (FDBPA). Any company that does not maintain a 7-day operations week will be immediately in violation of the 1-day requirement when a complaint is received on a Friday and processed on a Monday. Similarly, any week that has a Friday or Monday holiday will automatically place a company in violation of the 3-day response requirements. Furthermore, these short timelines seem to suggest a lack of understanding of the operations within businesses the Department regulates. Finally, RMAI questions whether the Department through regulation can override the requirements of the Rosenthal Act or FDBPA and would respectfully request that the rule follow the existing response times already codified by state and federal law. For small businesses with few employees, including those with one or no employees as referenced in paragraphs (2) and (3) below, a 1-day, 3-day, and 7-day response time is entirely unrealistic.

- (2) ***Exemption for Small Businesses*** – The majority of RMAI’s 600 member companies are small businesses. Many of these small businesses have a single employee who is the owner. In reading these proposed regulations, we feel the drafter was picturing large corporations with hundreds or thousands of employees as the “typical” covered entity. That simply is not the case within the collection industry. The level of complexity in response deadlines, reports, and information tracking associated with complaints would be considered complex for a Fortune 500 company but literally impossible for a single person who owns and runs a small business. This rule will put RMAI’s small business members out of business or force them to relocate to other states and cease operations on California accounts. RMAI would respectfully ask that businesses with less than 100 employees be exempt from these rules as drafted. At the very least, a more reasonable alternative approach for small businesses must be created.
- (3) ***Exemption for Investors*** – RMAI would request that an exemption be provided for investors who purchase receivables who never communicate with consumers or possess the information required by the rule (i.e., passive debt buying companies). RMAI was supportive of the passage of SB 908 in 2020 which licensed both collection agencies and active and passive debt buying companies in California. As this proposed rule is drafted, passive debt buying companies (which typically have no employees) would be considered a covered entity despite that they never contact a single consumer nor are they contacted by consumers, they are merely investors in a portfolio. That portfolio is 100 percent managed by a third party. Clearly, the Department was not considering companies of this nature when drafting the proposed rule or they would have realized the impossibility of compliance.
- (4) ***Scope*** – Approximately 50% of RMAI certified members receive zero complaints on the CFPB complaint portal in an average year while 97% statistically maintain a zero percent consumer complaint rate.¹⁵ RMAI would request the Department consider creating a reward

¹⁵ <https://rmainl.org//rmai ftp/Complaints-Infographic.pdf>

or incentive for those companies that are already highly compliant as demonstrated through little to no consumer complaints. Perhaps businesses that maintain less than a certain threshold of complaints on the CFPB complaint portal could be exempt from the provisions of this rule, or certain provisions of the rule, as long as they remain compliant with the CFPB reporting and response requirements? If they go above the threshold, then they would have to comply with the rule. For example, it seems unreasonable to require companies with no consumer complaints to file quarterly reports with the Department. This could also address the passive debt buying company scenario discussed above.

- (5) ***Focus on Electronic Complaints*** – Section 1072 of the proposed rule, requires companies to process complaints electronically, through traditional mail service, and by phone. RMAI would respectfully request that these requirements only apply to email or through access to an online complaint registry, much the same way the Department only allows an online form when submitting a complaint to the Department pursuant to paragraph (a)(3) of section 1072. Clearly, the Department realized the complexity of taking complaints in other formats and is the reason for limiting it to a single format. Many businesses that will be licensed as debt collectors in California are businesses with less than 10 employees, some as mentioned before have one or even no employees; if the Department cannot handle multiple reporting formats with its available resources, how is it expected that a small business will?
- (6) ***ID Verification*** – Paragraph (a)(2) of section 1072 provides for very minimal information to start a complaint and prohibits the covered person from requesting additional information to confirm the complainant’s identity. Debt collectors would arguably be in violation of the California Rosenthal Fair Debt Collection Practices Act, the California Fair Debt Buying Practices Act, and numerous privacy laws designed to protect consumer information if they engaged in a conversation or shared information to a consumer based on such limited content to confirm identity. Covered entities must need to be confident that they are in fact communicating with the consumer. This system will open consumer data possessed by debt collectors to opportunities for fraud, identity theft, and the prying eyes of stalkers, criminals, or those who engage in abusive behavior such as domestic violence.
- (7) ***Policies & Procedures*** – RMAI requires numerous policies and procedures as part of its nationally recognized Certification Program. One of RMAI’s standards,¹⁶ requires all certified businesses to maintain consumer complaint and dispute resolution policies and procedures that are subject to independent third-party audits. RMAI would respectfully request that any business that is RMAI certified and has undergone an independent third-party audit and found to be compliant be exempt from transmitting policies and procedures to the Department or alternatively be offered some level of accommodation due to the compliance requirements of this highly rigorous program.

¹⁶ Supra, note 1. Appendix A, Standard # A5.

(8) *Handle the Debt Collection Complaint Process through the New Licensing Law* – The new California Debt Collection Licensing Act contains a provision in section 100021 for a licensee to file an annual report with information that is statutory codified or is requested by the Commissioner. Section 100023 also gives the Commissioner the power to “as often as the commissioner deems necessary and appropriate . . . examine the affairs of each licensee.” RMAI would respectfully request that the Department develop a complaint structure tailored to the unique operational characteristics and the statutory requirements already mandated of collection agencies and debt buying companies within the power afforded the Commissioner in Division 25 of the Financial Code. Please do not throw debt collectors into an amorphous complaint regimen designed for large companies that are most likely not already covered by complex laws and regulations at the state and federal level that have requirements for handling complaints and processes for verification of identity and accounts.

Conclusion

RMAI prides itself at being a balanced resource to legislatures and regulators. We have supported a number of consumer protection laws over the past decade in California, including the California Debt Collection Licensing Act. In addition, we have provided resources and information to the Department which we have believed to be helpful to the Department. Please hear us, when we inform you that this rule is not workable for the small business community. Please rethink the Department’s approach to the handling of complaints and inquiries. RMAI is not opposed to having robust requirements related to consumer protection but they have to be able to be reasonably operationalized. This proposed rule cannot be operationalized by small businesses and will add a level of complexity and confusion beyond anything experienced within the industry for larger companies in the name of “consumer protection” even though it does not add any significant enhancements to the complaint and dispute process already established in the collection industry through numerous California laws, federal laws and regulations, and the CFPB consumer complaint portal.

RMAI sincerely appreciates the opportunity to comment on the proposed regulations. Please do not hesitate to contact RMAI General Counsel David Reid at [REDACTED]@rmaintl.org or myself at [REDACTED]@rmaintl.org if you need further clarification on RMAI’s comments.

Sincerely,

[REDACTED]

Jan Stieger,
Executive Director