

August 30, 2022

DCLA.Inquiries@dfpi.ca.gov

Re: Comments about Proposed Regulations Department of Financial Protection and Innovation Title 10. Investment Chapter 3. Commissioner of Financial Protection and Innovation Pro 05-21 Debt Collection Licensing Act

Dear Commissioner:

Some to the newly the proposed regulations state:

§1850.70 Annual Reports.

(a) The annual report required by Financial Code section 100021 shall be submitted by each licensee with an attestation to its accuracy and completeness signed by a principal officer or sole proprietor of the licensee. The report must be submitted electronically according to instructions provided by the department.

(b) "Preceding year" means calendar year, January 1 through December 31.

(c) The total number of California debtor accounts should be counted by transaction, not by debtor. If a single debtor has multiple accounts, each account should be counted separately.

(d) The total number of California debtor accounts collected in the preceding year shall include the following:

(1) the total number of California debtor accounts collected in full.

(2) The total number of California debtor accounts collected that settled for less than the full amount of the debt.

(3) The total number of California debtor accounts collected where less than the full amount of the debt was collected, and a balance remains due.

(f) The face value dollar amount of California debtor accounts in the licensee's portfolio in the preceding year means the total amount owed by all debtors on all accounts before any fees or other charges are added by the licensee, as of December 31 of the preceding year, regardless of when the accounts entered the portfolio.

(d) Each licensee shall retain the information in subdivision (c), in a form readily accessible, for at least seven years after any of the following, whichever occurred last:

(1) The account has been settled, whether for full payment or a different amount, and the consumer has been informed that they no longer owe the debt and that no further contact or collection attempts will be made by the licensee, or

(2) the account has been returned to the creditor whether or not payments have been made, or

(3) the account is sold or all collection attempts have ceased.

Please consider the following:

1. The proposed information needed for reports and retention for small businesses, especially law offices, is overly and unnecessarily burdensome.

2. It is not reasonable that total number of California debtor accounts should be counted by

transaction and not by debtor.

All delinquent accounts of one debtor has with one creditor, by law must be joined in the same lawsuit. It is unreasonable to require that additional records be kept of how many “transactions” a debtor has. Moreover, the term “transaction” itself is not clear. Is each time an advance on a credit card or line of credit a transaction? Normally it is. If one person owe one creditor on three loans, that debtor account in the law office is in one file. It is unduly burdensome to have to count each “transaction” whatever that is separately.

3. The new statute do not the level of information that the proposed regulations will require. The information sought will not make a difference to consumers but will be unreasonably burdensome for law firms that do not have expensive computer systems that the banks and large creditors have.

4. It is unreasonable to require that law firms (and probably also collection agencies) calculate as of the end of the year the “total amount owed.” Law firms will have to manually calculate on spreadsheets how much is owed. We do not have systems like banks do that can just open an account or run a balance owed on all accounts.

Until the accounts are reduced to a judgment that have different interest rates. Sometimes they do not accruing interest. It would make more sense to require the amount on the account as of the date assigned and/or the date the last payment was received.

Again, please do not make unnecessary work for small law firms that are in the business of collecting debt. The result is that you will drive the small firms out of the business and you will only have the impersonal mills that do not try to work with debtors on a one to one basis.

5. Code of Civil Procedure Section 340(a) states that there is a one year statute of limitations for actions “upon a statute for a penalty or forfeiture, if the action is given to an individual, or to an individual and the state, except if the statute imposing it prescribes a different limitation.” Therefore it does not make sense to require records to be kept for seven (7) years. Also, due to privacy issues, it is dangerous to keep records for that long.

Moreover, when a law firm substitutes out of a case the law firm has to give its clients its files. The proposed regulation poses unreasonable burdens that cannot be met.

Thank you.