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VIA EMAIL

August 29, 2022

Department of Financial Protection and Innovation
Legal Division; Attn: Sandra Navarro, Legal Assistant
2101 Arena Blvd.
Sacramento, CA 95834

Re: Comments on the Debt Collection Licensing Act; PRO 05-21

Dear Ms. Emily Gallagher,

We represent a nonprofit, private university located outside of California ("Client"). On behalf of our Client, and consistent with the discussions we had previously with the Department of Financial Protection and Innovation ("DFPI") on March 18, 2022, March 21, 2022, and August 16, 2022, we respectfully write to submit this comment letter regarding the Debt Collection Licensing Act ("DCLA"). To be clear, the Client is not a debt collector by any stretch under existing debt-collection statutes, nor is the Client a debt collection agency in the sense of the industry term. The motivation for reaching out to DFPI in this matter is rooted in the Client's commitments, in harmony with its mission and intellectual traditions, which include discharging duties with thoroughness, fairness and integrity. The inquiry herein is also made in view of the broad language contained in the newly-enacted DCLA, and the desire to proactively and responsibly clarify the DCLA's applicability moving forward. Given such goals, our Client is appreciative of the opportunity to submit this comment letter. To provide you with relevant context for our comments (enumerated below), please be advised of the following factual aspects of our Client's educational programs.

Factual Background:

From the outset, the Client's approach to students' financial status balances the need for payment against an abiding commitment to the well-being of the student. The Client deploys a student-centered approach to financial aid and payment for educational services, including assistance to help students and their families understand education costs by way of financial aid awards, financial aid "to do" lists, coaching with a Certified Personal Finance Counselor, other financial wellness and empowerment programs, outside scholarships, payment plans, and flexibility to reduce expenses (*e.g.*, attend part-time, live off-campus, etc.).

Across the entire student population, students who have an outstanding balance by the end of the term represent less than 2% of the total charges billed. A student may encounter circumstances that may lead to having outstanding account balances, such as loss of federal aid arising out of unsatisfactory academic progress, changes in the student's personal or family

situation or employment, or a reluctance or embarrassment of the student to communicate about scholarship losses to their parents, etc. If any of these challenging events were to occur, the Client's process is to stand by and work with the student to perform gentle outreach, including counseling, evaluation of hardship awards, and various other measures before sending the accounts to outside parties like the Client's outside billing servicers or collection agencies (which have already timely applied for the DCLA license). As compared to most schools, the Client keeps student accounts "in house" for a longer period and has found that more collaborative internal collections efforts reduce the amount of accounts in collections. Based on a 2020 benchmarking report, our Client has internal outreach practices that are more lenient and have fewer students in collections, *i.e.*, 2.9% as compared to the national average of 5.4%.

Against this factual backdrop, we write to set forth **the following three comments**.

First, the DCLA should be clarified to include an exemption for private, non-profit universities, alongside the other categories of businesses already exempted from the DCLA's licensure requirements in the current proposal. The reason such an exemption is necessary is because, as currently drafted, the DCLA and proposed implementing rules cast much too wide a net compared to the statute's original intent. In particular, the Client has a number of payment options made available to help students pay for education, none of which constitutes "credit" in the traditional sense. Absent a clarification to the DCLA, however, an ambiguity remains regarding which type of educational institution, if any, ought to be subject to DCLA licensure requirements.

More specifically, among those students who are in collections, some students are paying through alternative methods that are not truly equivalent to a "credit" transaction. Three such examples of alternative methods include the following:

- Employer programs. A student may have a separate arrangement through the student's employer, whereby the employer will pay for tuition and fees. In the Client's employer programs, the Client is amenable to allowing students who are eligible for employer reimbursement to defer the payment of applicable tuition and fees. No interest is charged in the deferment period. No assessment of the student's creditworthiness is done. There is a modest application fee to simply cover administrative costs of the program. A late payment fee may be assessed monthly on past due balances. The student, not the employer, remains responsible for the tuition and fees due.

- Third-party programs. Separate from the employer program, there may be occasions in which a third-party sends our Client the payment for the tuition and fees on the student's behalf. For example, if the student's family has saved up funds in a state-run 529 account, that state would be a third party who would be billed for the student's education. Some states require the Client or schools to send the bill to them; others are fine with the students submitting the bills directly.

- Payment plans. As distinct from a payment plan that is arranged by the external servicer or collections agency after the student has become delinquent, here we refer to a student's election to go on a payment plan at the outset. Meaning, when faced with the obligation to pay for tuition and fees, the student has the option to pay using a variety of plans that permit the student to spread out the costs over a maximum of 12 months. The student is permitted to go online and select the best plan for the student, *e.g.*, an annual plan versus a term plan, etc. Internal outreach to address late payments, however, does not begin until the student is 30 days past due from the date of the first installment due date. There is no interest charged throughout the period of the payment plan, and no credit check or underwriting, per se, is done to "qualify" for enrollment into any payment plan. There is a modest enrollment fee to cover administrative costs of the program. About 25% of the entire student population (without regard to CA status or not) are on payment plans. Of those, only 11% are in internal collections. Of those, only 4% are students with a permanent residency addresses in California, *i.e.*, approximately 21 students (in 2020, for example). A late payment fee may be assessed on that portion of the installment that was not paid.

Generic outreach to a student to follow-up on payment by the initial due date (in the absence of a payment plan or special payment method) should not fall within the ambit of the DCLA. Simply asking a student to confirm whether the services have been paid for, without a separate financing arrangement, would be akin to a retail purchase cash transaction, but would not constitute a financing transaction (and is thus not "acquired on credit"). In turn, this scenario would also not trigger the definition of "consumer credit transaction," pursuant to the language currently set forth in the DCLA.[1]

For these reasons, a full exemption should be included for nonprofit, private educational institutions that have programs of these types. In the alternative, the DFPI should at a minimum clarify that outreach undertaken to obtain payments on unpaid student accounts, performed in the normal course as to students who simply missed the due date, would not fall within the ambit of the DCLA. In addition, if the DFPI determines not to grant an exemption for nonprofit, private educational institutions, then at the least the DCLA should be clarified to convey that any effort to collect on these three programs (employer programs, third-party programs, and payment plans) would not constitute the "business of debt collection" or constitute items "acquired on credit" to the extent that such programs do not pull students' credit reports, do not depend on underwriting, and do not charge interest rates.

Second, the DCLA should be clarified to enable out-of-state universities to understand and calculate the meaning of "California debtor accounts." As we previously discussed, this term is currently defined (in the context of reporting requirements) to mean: "accounts that are owned by consumers who reside in California at the time that the consumer makes a payment on the account." Financial Code § 100002(b). Elsewhere, in the context of the licensure requirement, the proposed language also states that the requirement of "acting in" California has occurred if the entity is "located outside of the state and is seeking to collect from a debtor that resides in this state."

The problem with this language, however, is none of it reflects the reality of how students live and learn today, especially following the start of the COVID-19 pandemic. As previously discussed, the Client has a record of the student's permanent address. The Client does not, however, monitor the students' whereabouts nor does the Client engage in further questioning of the student to decipher whether the reported address is indeed where the student is physically located, especially in this new era during which a student's residency is more transitory than ever. For example, a student could list her permanent address as in California, but be living on campus (outside California), be living off-campus but near the Client (outside California), or even be in a different state altogether (neither California nor the state in which the Client is located) to stay with friends, help relatives outside California, or for any other reason. As you can imagine, students are highly mobile already and face various demands and options from remote learning, internships, and other learning opportunities; the COVID-19 pandemic has only increased the level of student mobility in recent years. For a variety of reasons, students may report their permanent addresses as being in California (*e.g.*, as where their parents maintained their family address), but may not actually be physically residing in California at all. Undergraduate students typically report the permanent address as where their parents are living.

To clarify this issue, we suggest that the DFPI should consider the terms "reside in California" and "California debtor accounts" to exclude students who live outside of California in the academic term when the account goes to collections,

[1] As discussed with the DFPI, the DCLA's licensure requirement covers only the activity that qualifies as the business of "debt collection," which is defined in the DCLA to mean: "any act or practice in connection with the collection of consumer debt." Financial Code § 100002(i). The language does not stop there. Instead, the DCLA further defines "consumer debt" to mean "money, property, or their equivalent, due or owing, or alleged to be due or owing, from a natural person by reason of a consumer credit transaction." *Id.* at § 100002(f). A "consumer credit transaction" is defined to mean: "a transaction between a natural person and another person in which property, services, or money **is acquired on credit** by that natural person from the other person primarily for personal, family, or household purposes." *Id.* at § 100002(e) (emphasis added).

and include only students who physically are living in California then.

Finally, for purposes of the DFPI's licensure requirements, we noted a potential discrepancy between the statutory language and the license application. Section 100009 of the Financial Code provides in relevant part that if an applicant is a corporation, the Commissioner shall investigate "the applicant, its principal officers, directors, trustee, managing members, and individuals owning or controlling, directly or indirectly, 10 percent or more of the outstanding equity securities or any individual responsible for the conduct of the applicant's debt collection activities in California." According to a reasonable reading of this language, it appears that due to the insertion of the term "or", the DFPI would contemplate required fingerprinting and background checks only for an individual responsible for the conduct of the applicant's debt collection activities in California, as opposed to all directors, officers, and trustees, etc. However, the NMLS license application instructions have replaced "or" in the statute with "and," suggesting that both categories of individuals must be fingerprinted (*i.e.*, not only the individual responsible for debt collection in California, but also all of the university's directors, officers, and trustees). We note there may be ambiguity here, given the potential conflict between the statute and the license application. We wish to highlight that given the nature of the Client, a nonprofit and private university, the total number of "officers, directors, and trustees" is nearly 50 individuals.

To clarify this issue, we suggest that the DFPI should explain that, for any entity required to register under the DCLA, a fingerprinting and background check process is needed solely for the officer(s) who is/are responsible for debt collection activity in California, and is not needed for any of the officers, directors, and trustees who are not responsible for such activity in California. Otherwise, the protocol for fingerprinting and background checks would be far too unwieldy and inefficient, with little benefit to the DFPI or consumers given the DCLA's stated goals.

We appreciate that many of the DCLA-related items, as applied to higher education, present issues of first impression. It is our Client's goal that students' interests are protected and the above three requests are essential, we believe, for achieving that goal. Should you require any clarification in the course of considering this comment letter, please do not hesitate to reach out to us. If a call would be easier, we are available at your convenience to discuss, as well.

Respectfully submitted,

[redacted]

J.H. Jennifer Lee

cc: Summer Volkmer
Sophia C. Kim