



August 29, 2022

Christopher S. Shultz, Acting Commissioner
Department of Financial Protection and Innovation
2101 Arena Blvd.
Sacramento, CA 95834

Subject: Comments on Draft Text for Proposed Rulemaking Under Debt Collection Licensing Act – File No. PRO 05-21

Acting Commissioner Shultz:

On behalf of the Association of Independent California Colleges and Universities (AICCU), thank you for the opportunity to provide written comments regarding draft regulations for the Debt Collection Licensing Act.

AICCU is the organizational voice for over 80 independent, nonprofit, regionally-accredited colleges and universities throughout the state. Collectively, these institutions educate over 180,000 undergraduate students and another 148,000 graduate students. As institutions of higher education (IHEs), colleges and universities pursue payment of unpaid debts for various things, including but not limited to tuition payments, auxiliary fees and charges, room and board charges (which is not explicitly exempted from the definition of consumer debt as residential rental debt), library or other facility fees, parking tickets, etc. However, as nonprofit organizations, these are not pursued for profit or gain.

When Senate Bill 908 (Chapter 163, Statutes of 2020) was signed into law, it added new statutory requirements for licensure under the Debt Collection Licensing Act, stating in Financial Code Section 100001 that “no person shall engage in the business of debt collection in this state without first obtaining a license pursuant to this division.” We are appreciative that the draft regulations released by the Department of Financial Protection and Innovation (DFPI) attempt to articulate the scope of the term “engage in the business of debt collection” since it was left undefined in the statute.

Below, we outline areas where the regulations, as drafted, do not provide sufficient clarity for independent, nonprofit IHEs, and offer draft amendments for your consideration that we believe improve the language.

Draft Regulations Are Exceedingly Difficult to Interpret for Independent Institutions of Higher Education and Do Not Cover All Relevant Activities

While the proposed addition of language in Section 1850 subdivision (j) would, on its face, appear to clarify that nonprofit colleges and universities are not required to pursue licensure, when the draft regulations are examined in totality, it remains difficult to interpret, given the varying types of activities at nonprofit colleges and universities and the cross-references to other regulatory requirements.

Specifically, in proposed Section 1850.1, which outlines the scope of licensing requirements, subsection (g) states:

A person whose debt collection activity is limited exclusively to debt collection regulated pursuant to Division 12.5 of the Financial Code is not required to obtain a debt collector license.

Unfortunately, this exemption, although helpful, does not cleanly resolve the issue for nonprofit colleges and universities. Division 12.5 of the Financial Code does not address the totality of situations in which university staff may be recovering debts owed as part of their normal operations.

For example:

1) Subdivision (b)(4) states that the division “shall not apply to any of the following,” including “a public postsecondary educational institution or a private nonprofit postsecondary educational institution servicing a student loan it extends to the borrower.”

This appears to exclude any institutional staff who **only** collect loans issued directly from the institution to the student. As drafted, this draft regulation does not appear to exempt institutional staff whose work involves collecting monies owed for other unpaid debts (room and board, charges, library and other facility fees, parking tickets, etc.), and therefore would still require some subset of an institution’s employees to pursue a debt collector license.

2) Subdivision (c) states that “a private postsecondary educational institution not exempted from the requirements of this division pursuant to subdivision (b) shall not be required to comply with this division for the servicing of a student loan it extends to a borrower that a licensee is servicing pursuant to a servicing agreement with the private postsecondary educational institution for that student loan.”

It appears that this subdivision provides an exemption for an IHE if they initiate the consumer debt. However, it is unclear if the same exemption would apply to debt collection or loans that are managed by the university but issued by the federal government. We appreciate that this addresses one potential debt collection activity on a university campus; however, unfortunately it does not provide an exemption from licensure requirements for staff collecting debts owed for various other activities that fall within the normal operations of a nonprofit college or university.

Proposed Amendment to Draft Regulations

The proposed regulations already provide several exemptions under Section 1850.1 that we believe would be equally appropriate to provide to independent, nonprofit colleges and universities. Specifically, hospitals and healthcare providers are exempted under subdivision (e) “if the debt it collects is on its own behalf and is payment for medical or other services or products it provided.” Additionally, both the University of California and California State University and their respective campuses are exempt under subdivision (f).

As independent higher education institutions are recognized as 501(c)(3) nonprofit entities and generally organized as California nonprofit public benefit corporations under California law, we believe that a similar exemption for them is both appropriate and helpful in further clarifying the scope of the Debt Collection Licensing Act. We propose the addition of the following language:

An independent institution of higher education, as defined in Education Code 66010 (b), is not engaged in the business of debt collection if the debt it collects is on its own behalf and is payment for educational, housing, or other services it provided.

This would provide clear, concise exemption language that is consistent with other provisions of the code section. Additionally, by defining the exemption to Education Code 66010 (b), the language ensures that the exemption only applies to nonpublic IHEs that “are formed as nonprofit corporations in this state and are accredited by an agency recognized by the United States Department of Education.”

We believe this would give unambiguous direction to our colleges and universities, while ensuring parity in the implementation of the regulations for public and independent, nonprofit colleges and universities in the state for similar operational activities.

Thank you again for the opportunity to provide written comments on these draft regulations. If you have any questions, please contact me directly at alex.graves@aiccu.edu.

Sincerely,

[Redacted Signature]

Alex Graves
Vice President for Government Relations