Lexington National Insurance Corporation
Bankers Insurance Company
Allegheny Casualty Company

August 29, 2022

Via E-mail (regulations@dfpi.ca.gov)

Department of Financial Protection and Innovation
Legal Division
2101 Arena Blvd.
Sacramento, CA 95834

RE: PRO 05-21 – Comments on Proposed Regulations Under the Debt Collection Licensing Act

To Whom It May Concern:

Thank you for the opportunity to provide comments on the Department of Financial Protection and Innovation's ("Department") July 15, 2022 Invitation for Comments on Draft Text For Proposed Second Rulemaking Under the Debt Collection Licensing Act (PRO 05-21) ("Proposed Regulations"). We are writing to comment on the scope of the licensing exemptions under the California Debt Collection Licensing Act ("DCLA") and respectfully request that the Department expressly exempt entities and individuals licensed and regulated by the California Department of Insurance ("DOI").

Relevant Background of the Principal Parties

Lexington National Insurance Corporation, Bankers Insurance Company, and Alleghany Casualty Company (collectively, "Sureties") are national property and/or casualty insurance companies that specialize in bonds for assurance of bail. The Sureties are licensed by the California Insurance Commissioner. In addition, in connection with the offering of bail bonds, the Sureties engage DOI-licensed bail agents as required by California Insurance Law.

Scope of the DCLA

Under the DCLA, any person engaging in the business of debt collection in California must obtain the Debt Collection License.[1] A person is acting "in California" if the person is located in California and is seeking to collect from a debtor that resides inside or outside California, or is located outside of California and is seeking to collect from a debtor that resides in California.[2] For purposes of the DCLA, the following definitions apply (or may apply):

- "Debt collector" means, in relevant part, any person who, in the ordinary course of business, regularly, on the person's own behalf or on behalf of others, engages in debt collection.[3]

[1] Cal. Fin. Code 100001(a); Debt Collectors: Frequently Asked Questions | The Department of Financial Protection and Innovation (ca.gov).
[2] *Id*.
[3] Cal. Fin. Code § 100002(j).

- "Debt collection" means any act or practice in connection with the collection of consumer debt.[4]

- "Debt" means money, property, or their equivalent that is due or owning or alleged to be due or owing from a natural person to another person.[5]

- "Consumer debt" or "consumer credit" means 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.[6]

- "Consumer credit transaction" means 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.[7]

- "Engage in the business of debt collection" means a person engages in the business of debt collection and is required to be licensed [under the DCLA] if the person (1) engages in debt collection for a profit or gain, and (2) the activity is of a regular, frequent, or continuous nature. Advertising or otherwise offering the service of debt collection for remuneration constitutes engaging in the business of debt collection.[8]

The DCLA sets forth limited exemptions and the Proposed Regulations expand on those exemptions to include, in relevant part:

> (c) Original creditors: A creditor seeking, in its own name, repayment of consumer debt arising from credit the creditor extended is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act, unless it meets one or more of the following criteria:
>
> (1) Five percent or more of the creditor's annual profits over the last twelve months, whether contracted for or received, constitute collection fees, late fees, or any other charges added to the original consumer credit transaction that created the debt.
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> (2) Within the last 12 months, an average of ten percent or more of the creditor's inventory was repossessed at least once, either by the creditor directly or through a third-party.
>
> (3) The creditor has a monthly average over the last 12 months of twenty-five percent or more of the gross amount of its accounts receivables ninety or more days past due.
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> (d) A person solely servicing debts not in default on behalf of an original creditor, as described in subdivision (c), is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act. For

[4] Cal. Fin. Code § 100002(i).
[5] Cal. Fin. Code § 100002(h).
[6] Cal. Fin. Code § 100002(f).
[7] Cal. Fin. Code § 100002(e) (emphasis added).
[8] Proposed Second Regulation, § 1850(j), *available at* TEXT OF PROPOSED REGULATIONS (ca.gov).

purposes of this section, "default" means more than 90 days past due, unless the contract governing the transaction or another law provides otherwise.[9]

Comments and Requested Revisions

Based on a review of the California Insurance Law, the DCLA should not apply to entities/individuals licensed and regulated by the DOI, including those with express authority to engage in the "type of loan transactions otherwise permitted by law" without obtaining another license.

While there is an argument that DOI-licensed entities should be exempt from the DCLA as "original creditors" if it does not meet any of the foregoing criteria or entities that solely service debt not in default on behalf of the original creditors, there may be instances when a DOI-licensed entity meets one of the criteria in the proposed regulations or service debt in "default" such that DCLA licensure may be triggered. This will cause disruption in the industry because DOI-licensed entities will need to either: (i) constantly monitor its practices to see whether it triggers licensure and additional regulator oversight; or (ii) apply for DCLA registration in an abundance of caution. Both options significantly increase the operational burdens of such licensed entities, which may increase costs that may need to be passed on to the customer. Such additional operational burdens appear unnecessary given such entities/individuals are already licensed and regulated by DOI.

In addition, the Insurance Code grants incorporated insurers holding a certificate of authority the authority to transact insurance business in California and to "engage in [California] in the type of ***loan transactions*** otherwise permitted by law without obtaining any other license or certificate."[10] As such, the Insurance Commissioner should be considered incorporated insurers' regulator as opposed to the Department.

Based on the foregoing, we believe that the Department should include an express exemption for entities and individuals licensed and regulated by DOI.

If you have any questions or would like to discuss this comment letter further, please do not hesitate to contact our counsel, Sherry-Maria Safchuk, at (310) 424-3917 or ssafchuk@buckleyfirm.com.

Sincerely,

[redacted]

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[9] *Id.*, § 1850.1(c)-(d), available at TEXT OF PROPOSED REGULATIONS (ca.gov).
[10] Cal. Ins. Code §§ 699, 700, 1100.1 (emphasis added); *see* California Department of Insurance, Certificate of Authority Instructions (insurance.ca.gov) ("To operate in California, all insurers must gain admittance by obtaining a Certificate of Authority."); *see also* Cal. Ins. Code § 23 (defining "insurer" as the person who undertakes to indemnify another by insurance, and the person indemnified is the insured).