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The California Association of Collectors ("CAC") is a not-for-profit California statewide association of collection agencies which collect debts assigned to them for collection purposes by original creditors, debt buyers and governmental agencies. CAC provides educational opportunities and conferences for its members, engages in legislative advocacy efforts on behalf of its members, and offers financial literacy scholarships to high school students.

Throughout 2020, CAC worked very closely with Senator Robert Wieckowski and his staff in negotiating the provisions of SB 908, the Debt Collection Licensing Act ("Act"). These efforts culminated in CAC sending a letter of support for SB 908 to Governor Newsom.

CAC has reviewed the Proposed Regulations under the California Consumer Financial Protection Law: Debt Collection Licensing Act (PRO 05-21) issued by the Department of Financial Protection and Innovation ("DFPI") and, assuming the DFPI anticipates applying the proposed regulations in PRO 05-21 to licensees under the Debt Collection Licensing Act, offers the below comments to the DFPI's Proposed Regulations (PRO 05-21).

General Comments.

Generally, the obligations of PRO 05-21 are inconsistent with the requirements mandated by, and the processes established by, the CFPB and existing law. Many of the regulations proposed in PRO 05-21 are overly burdensome, will increase the costs of compliance to licensees substantially and, in this strict liability environment, will potentially expose licensees to substantial damages. Standardization and consistency are paramount in the development of effective and useful consumer protections.

In order to provide clarity and consistency with the reporting processes, the DFPI should manage a complaint portal that differentiates between consumers' "complaints" and "disputes," and is consistent with the terminology utilized by the CFPB. In directing complaints to its portal, the DFPI will have the ability to pull analytics from consumer complaints, including but not limited to complaint types and frequency.

As proposed, many of the regulations proposed in PRO 05-21 are excessive and overly broad, will result in a considerable increase in the operating costs of licensees (the majority of which are small businesses), and will create a financial barrier to entry into this industry for historically disadvantaged business owners.

Comment re "Complaint"

The proposed regulations include a reference to "complaint." The regulations proposed by the DFPI need to differentiate between a complaint, a dispute and an inquiry. According to the CFPB, a "complaint" is a submission that expresses dissatisfaction with, or communicates

suspicion of wrongful conduct by, an identifiable entity related to a consumer's personal experience with a financial product or service. It is important to distinguish between expressions of dissatisfaction regarding the subject debt and the acts of the licensees in attempting to collect the debt. A dispute concerning the debt is different from a complaint concerning the collection activity of a collection agency. Additionally, a consumer might dispute the amount of a debt but acknowledge the veracity of the debt. Further, a consumer may seek to inquire about a debt (e.g., the identity of the original creditor, the addition of any fees, the accrual of interest, etc.) while not complaining about the debt.

These distinctions need to me made clear, especially considering the reporting requirements of licensees.

Comments to Specific Sections of Proposed regulations (PRO 05-21).

1. **Section 1850(o) – "net proceeds generated by California debtor accounts"**

   This section should state clearly that the amounts remitted by a licensee to its client or assigning creditor shall not be included in the determination of the licensee's "net proceeds generated by California accounts." Additionally, the amount to be remitted should not be included in the "gross income" of the licensee since it is not the licensee's income.

2. **Section 1850.70 – Annual Reports**

   Section 1850.70 regarding annual reports is overbroad in terms of the data requested. For example, requiring the reporting of both (a) the total number of "settled" accounts and (b) the total number of accounts where less than the full amount was collected and a balance is still owed. This data can be duplicative and could be difficult to extract in reporting. Further, it is not clear how the reporting of this information will be relevant to regulating licensees since, in most instances, the authorization ability to settle and accept partial payments is client-driven.

3. **Section 1850.71 – Record Retention – General**

   Section 1850.71 requires licensees to maintain a wide variety of records (See Section 1850.71(a) and Section 1850.71(c)) for a period of seven years (See Section 1850.71(d)).

   Section 1850.71(a) and Section 1850.71(c), taken together, require the licensee to retain virtually all records regarding each account and each consumer. Section 1850.71(a)(6) requires the retention of all recorded calls, as does Section 1850.71(c)(6) (which might also be interpreted to require the recording of all calls).

   The seven-year time period is excessive and unreasonable, especially given that the CFPB's requirement under Regulation F for similar records is only three years. Mandating the retention of such a wide variety of documents for seven years is administratively and financially burdensome. No reason is given in support of such an expansive and costly storage requirement. The retention period should at a minimum be shortened, and CAC

suggest that the retention period should be consistent with Regulation F's three-year requirement.

Also, based on the statute of limitations set forth in the Rosenthal Act, the FDCPA, the TCPA and a California breach of contract claim, seven years is excessive.

Call recording storage is much more costly than storage of other records, and for this reason, a seven-year retention period is unduly burdensome. Based on estimates received by CAC members, the anticipated increased cost in storing all of the information mandated by Section 1850.71, including but not limited to the calls, will cost, at a minimum, more than $30,000.00 over the seven-year period and could cost substantially more based on the number of calls being stored. This additional cost, while significant for all licenses, is especially troubling for the small businesses that comprise the majority of this industry.

This proposed onerous and expensive retention requirement necessarily comes with the potential for additional data breaches, which may expose confidential and private information of a consumer (including but not limited to the consumer's personal health information) or of a client of a licensee. Certainly, these data breaches will not benefit California consumers.

Additionally, Section 1850.71(c)(3) requires a licensee to retain for the same seven-year period "[a]ll documents and records the licensee is required to maintain pursuant to any other law…" [Emphasis added.] The reference to "other law" includes every other law the collection agency is subject to, goes far beyond the scope of debt collection, and extends well beyond the purview of the DFPI, with no supportable reason for this requirement. The "other laws" have their own retention periods commensurate with the reasons for those laws, making this rule overreaching, unnecessary, unreasonable, overly broad and unduly burdensome to licensees. This requirement regarding the storage of all records relating to "other laws" should be deleted altogether.

4. Section 1850.71(c)(1) – Retention of Employee Records

This section requires a licensee to retain "all employee records" for seven years.

As noted in Section 1850.1(a), employees are not licensees under the Debt Collection Licensing Act (Act) and, since they are not licensees, the records relating to the employees are irrelevant to the regulation of licensees, except for identifying (by name) the employees who had contact with the consumers when collecting accounts on behalf of the licensees. Aside form that limited purpose, the records of the employees are not relevant.

The term "all employee records" is not defined, is ambiguous and remarkably overly broad. This term could include records regarding an employee's training, performance reviews, payroll history, family information, 401k plan, health benefits, medical information, worker's compensation matters, and more. Mandating that "all employee records" be retained for seven years and potentially turned over to the DFPI as the regulations imply would violate the privacy rights of California employees.

Section 1850.71(a)(1) requires simply that a record of the name of the employee engaging in collection activity be retained. There is no supportable reason to have a broad requirement to retain additional expansive and unnecessary employee records under the debt collection rules. The record retention requirement under Section 1850.71(c)(1) should be significantly narrowed to mandate the retention of only the name of the employee who engage in collection activity.

In substantially narrowing the retention request under Section 1850.71(c)(1), it is important to remember that employees are not independently licensed.

5. Section 1850.71(c)(5) – Settlement Records

Section 1850.71(c)(5) requires the licensee to retain records that (a) the licensee is no longer attempting to collect on an account that has been settled, (b) the consumer has been informed of the settlement, and (c) no further collection efforts will be made.

A settlement requires the acquiescence of the parties involved. Accordingly, the consumer would know that has occurred. Nevertheless, is this Section requiring that a new notice or other communication be sent to the consumer when an agreement has been made to accept less than full payment for an account? If so, what is the statutory basis for this new notice requirement? If a new notice will be required under these circumstances, will the DFPI develop a sample notice to be used? A sample notice will allow licensees to avoid unnecessary and expensive litigation in this strict liability environment. Each new notice or other communication required by law or by regulation adds significant costs to licensees and exposes them to substantial potential liability resulting from demands and lawsuits based on technical violations of laws or regulations.

Section 1850.71(c)(5)(c) states that “no further collection efforts will be made.” This is inaccurate and an overstatement.

A “settlement” can occur when the licensee (usually with the consent of the original creditor) agrees to accept periodic payments. Often, the reduction of the account is conditioned up the payment of the settlement amount. If those payments are not made, a notice of default is usually sent to the consumer and, if the default is not cured, the full amount of the account (minus the payments actually received) once again becomes due. Moreover, the settlement may permit the entry of judgement if the default is not cured. This, or course, will require court activity.

Also, after an account is settled, the account is still subject to being reported as settled, resolved, partially paid, etc.

6. Section 1850.71(d) – Sale, Return, or Selling of an Account or Ceased Collection Attempts

Pursuant to Section 1850.71(d)(1), if the settlement requires payments over 48 months, does this section require the license to retain the relevant records for nine years after the parties agree to the settlement? For example, the consumer and licensee agree to a

settlement on September 1, 2022, and the settlement requires payments for two years until September 1, 2024. The consumer makes the last payment in September of 2024. Is the licensee required to retain the records until September of 2031? Also, as noted above, after an account is settled, the account is still subject to being reported as settled, resolved, partially paid, etc.

Section 1850.71(d)(2) requires the licensee to retain the records for an account that has been returned to the creditor whether or not payments have been made. Most licensees have the ability, upon the assignment of any account, to return any account that the licensee elects not it pursue. In these circumstances, the licensee has reviewed the account, but not taken any action to collect the account. Is the licensee still required to retain for seven years the records relating to an account for which it undertook no collection activity? Section 1850.71(d)(1), at a minimum, should be conditioned upon the licensee having taken any collection activity on the subject account.

Section 1850.71(d)(3) requires the license to retain the records for an account for seven years after the account has been sold or collection attempts have ceased. "Collection attempts" is vague an ambiguous in this subsection and in other portions of the proposed regulations. Does "collection attempts" include the reporting of the debt even after a settlement has been completed? If the licensee elects not to file a lawsuit and elects not to send any further letters or make any calls, but the licensee elects to continue reporting the account, when does the seven-year retention period commence?

CAC appreciates the opportunity to provide these comments to PRO 05-21. Please contact Tom Griffin, CAC's legal counsel [redacted] or [redacted]), with any questions you may have regarding the above comments.

Respectfully Submitted,

Cindy Yaklin, Legislative Co-Chair
California Association of Collectors