

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:

One of the proposed regulations states:

“ADD: (o) For purposes of subdivision (a) of Financial Code section 100020, “net proceeds generated by California debtor accounts” shall mean the revenues less cost of goods sold or “gross income” generated by California debtor accounts.

(1) For purposes of this section, revenues generated by California debtor accounts means any income generated from collection activity for California debtor accounts, including but not limited to fees for services related to the collection of California debt accounts, income received from the payment of debt by a debtor, and income received from buying and selling California debtor accounts.

(2) For purposes of this section, cost of goods sold for the collection of California debtor accounts includes expenses directly attributable to the debt being collected, including the cost of the debt. The cost of goods sold does not include operational costs that are not directly attributable to the expenses for the collection of California debtor accounts.”

Please consider the following:

The Proposed addition of (o) incorrectly defines the Financial Code Section 100020 phrase “net proceeds generated by California debtor accounts” as revenues less costs of goods sold or “gross income” generated by California debtor accounts.

For debt collectors who are assigning their debt collection to third parties the definition will work because all costs incurred will be directly related to the amounts recovered.

However, your definition discriminates against law firms and collection agencies in the business of debt collection because their entire overhead is directly related to the income generated by working California debtor accounts.

Moreover, the term “net proceeds generated by California debtor accounts” means after costs, all costs, not just what you are defining as “costs of goods.” In addition to discriminating against businesses that are in the business of collecting debt from California debtors, the definition is basically unfair.

A far more fair and appropriate approach would be to have one regulation for first party debt collectors, such as the one you have suggested and have a different definition for third party collectors that would allow third party debt collectors to determine the percentage of their gross receipts are directly related to working in California debtor accounts, and then using that percentage determine how much of their net profits are from working on California debtor accounts.

Please keep in mind that the United States Supreme Court in the case of *US v. Santos*, 553 US 507 (2008) noted that the term "proceeds" can mean "the total amount brought in." However, just the term “proceeds” alone could be used to mean "net profit," Webster's 3d 1807.

Again, Financial Code Section 100020 does not use the word “proceeds” alone but says “NET PROCEEDS,” which can only reasonably mean, the amount brought in less all expenses association with said income, not just the “costs of goods sold.” As such, for a third party collector it should include the overhead of the operations, through which the payment was earned.

It is also worth noting that the term “net” in Webster’s Dictionary means “remaining after deductions, as for charges or expenses, as opposed to gross; net earnings; To gain or produce as clear profit.” To determine one’s net profit one should be allowed to deduct the percentage of costs of goods sold AND all overhead that are equal to the percentage of revenue directly related to collection of consumer debt from California debtors.

Thank you.