California Association of Collectors
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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, and it engages in legislative advocacy efforts on behalf of its members.

CAC has 133 collection agency members, of which 39 have five or fewer employees and 63 have between six and twenty-five employees. Accordingly, 102 of CAC's 133 collection agency members employ twenty-five or fewer people. CAC is a trade association comprised of small businesses.

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 Act issued by the Department of Financial Protection and Innovation ("DFPI") and offers the below comments in response to the DFPI's Notice of Modification to Proposed Rulemaking under the CCFPL: Consumer Complaints and Inquiries (PRO 03-21), dated December 22, 2022 ("Notice").

General Comments.

Generally, the obligations of PRO 03-21 are inconsistent with the requirements mandated by, and the complaint processes established by, the CFPB and existing law. The processes outlined in PRO 03-21 for covered persons are overly burdensome, costly and, in this strict liability environment, will potentially expose covered persons to substantial damages. Standardization and consistency are paramount in the development of an effective and useful consumer protections.

In order to provide clarity and consistency with the reporting processes, the DFPI should manage a complaint portal that receives consumers' complaints, and not "inquiries" (the definition of which is nebulous and ambiguous and is inconsistent 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 noted in the comments below, the added costs that will result from the Proposed Regulations will total in the tens of thousands for virtually each collection agency. These costs can be greatly reduced if the DFPI elected to maintain its own complaint portal.

As proposed, the rules will result in a considerable increase in the number of disputes, inquiries and complaints that will be made against covered persons. Combining this with the detailed investigation and reporting requirements regarding the disputes, inquiries and complaints will result in a significant administrative burden to the covered persons, most of which are small

businesses with a limited number of employees, and will add to significantly to the cost of their operations.

1. **Section 1071 – Definitions**. Under Section 1071(a), a "complaint" is defined expressly to include an oral or written expression of dissatisfaction from a complainant regarding a specific issue or problem with a financial product or service (except for the listed exclusions). This definition is rather broad and will impose unrealistic requirements on covered persons. Determining the difference between a complaint, a dispute and an inquiry will be challenging enough based on their definitions. Having to log, track and report oral complaints will be unduly burdensome, time consuming and costly. If a consumer expresses any dissatisfaction with a financial product or service during a call with a collector, that "complaint" will be subject to the regulations. Every negative comment about a bank, a dentist, or a product must be logged, tracked, and reported. This type of expression will not be considered a "complaint" only if the consumer verbally confirms during the initial contact that the matter has been resolved to the consumer's satisfaction. Why is this limited to the initial contact? If a consumer expresses satisfaction with the resolution of the matter in a subsequent contact, that should resolve the "complaint."

2. **Section 1072(b)(1)**. This Section requires a covered person to include certain written disclosures in all written communications with consumers including (A) the procedures for filing complaints, (B) a description of any time limits for filing complaints, and (C) a prescribed statement. All of this has to be disclosed – in every written communication – in 12-pt. type. Requiring the disclosure of "procedures for filing complaints" and a "description" of the time limits without more specificity or a sample of the language to be used will unnecessarily subject covered persons to substantial liability in this strict liability environment. And, mandating that the disclosures required in Section 1072(b)(1) must be included in every communication (rather than in the initial written communication) is excessive and unnecessary. Requiring the disclosures found in Section 1072(b)(1) may be confusing to a consumer and are certainly unnecessary if they are included in the final communication with a consumer that includes a closing statement or other indication stating that the debt has been resolved. Additionally, the disclosures mandated by Section 1072(b)(1) will be lengthy. Requiring these new disclosures, in addition to the disclosures required under Regulation F, SB 531, AB 424, and AB 1020 will lengthen the written communication.

3. **Section 1072(b)(2)**. This Section requires certain information to be displayed prominently on any web pages of a covered person relating to a financial product or service. This requirement should be limited to the main page of the covered person's website. Requiring such a disclosure on any web page is unnecessary and excessive. Further, what does it mean to prominently display the link? May the link be placed anywhere on the main page of a covered person's website? Is a specific location on the main page required for the display to be "prominent"? Can the DFPI provide an example of the prominent display that would satisfy this proposed regulation?

4. **Section 1072(c)(2)(A)**. This Section prohibits a covered person from requesting personal identifying information beyond "what is reasonably necessary to identify the complainant." This is vague and unclear and may lead to unnecessary liability exposure in this strict liability environment. The better solution is to list the information that may be requested (e.g., name, aliases, former names, addresses (current and former), date of birth, place of employment, social security number, among other data items to be specifically listed.)

5. **Section 1072(c)(2)(B)**. This Section precludes a covered person from requesting financial information unrelated to the specific complaint of the consumer. This is problematic if it prohibits a covered person from inquiring about the finances of the consumer in a joint effort (e.g., during a phone call) to reach a settlement or agree upon a payment plan.

6. **Section 1072(c)(3)**. This Section requires covered persons to return a consumer's voicemail within two (2) business days. This is too short. Most collection agencies in California consist of five (5) or fewer people. Based on the well-publicized challenges facing small businesses in hiring and retaining employees, and the increased reporting requirements imposed at the state and federal level, the time period in this section should be expanded to five (5) days. If the covered person fails to call a consumer back within two (2) business days (due to staffing shortages or a power outage, for example), the covered person may be exposed unnecessarily to liability in this strict liability environment.

7. **Section 1072(d)**. If the requirements of this section apply to oral complaints, this regulation will add significant operational costs to covered persons. To avoid potential liability, covered persons will have to proceed with caution in processing statements and comments as complaints which will require substantial staff time.

8. **Section 1072(d)(3)**. This Section is unnecessarily narrow as it authorizes a covered person not to respond to a repetitive complaint only if the complaint is the identical act, omission, decision, condition, or policy. Upon the direction of plaintiffs' lawyers and claimed credit repair companies, consumers will send complaints to covered persons that slightly vary as to the act, omission, decision, condition or policy being complained about in an attempt to flood covered persons with dispute letters aimed at tripping up the covered person to commit a violation that will expose the covered person to strict liability. This section should be revised simply to permit covered persons not to respond to repetitive complaints regarding the same account. The second sentence of Section 1072(d)(3) is confusing. What does "provision" in the second sentence refer to? What is intended by the second sentence that is not covered by the first sentence of this section?

9. **Section 1071(e)**. This Section provides that a question or request will not be considered an "inquiry" only if the consumer verbally confirms during the initial contact that the matter has been fully resolved to the consumer's satisfaction. Why is this limited to the initial contact? If a consumer expresses satisfaction with the resolution of the matter in a subsequent contact, that should resolve the "inquiry."

10. **Section 1072(f)**. This Section mandates that covered persons review certain processes and procedures every three (3) months. This should be extended to six (6) months. The three (3) month period is too short, may not permit sufficient time to make the assessment described in this section, and will require the commitment of substantial staff time.

11. **Section 1071(g)**. This Section defines "officer" as an individual designated by the covered person who has primary authority to monitor the covered person's complaint and resolution process. It is potentially misleading to refer to this person as an officer as this person may not be an officer of the covered person. Also, most limited liability companies do not have officers. And, sole proprietors and partnerships do not have officers. "Agent" may be a better title.

12. **Section 1072(g)(2).** If section 1072(b)(1) is not revised as set forth above, the inclusion of the statement in Section 1072(g)(2) is unnecessary and repetitive since Section

1072(b)(1), as proposed, requires the inclusion of this statement in every written communication with a consumer.

Section 1072(g)(4). This Section states that a covered person "may" respond to a subsequent complaint by noting that the covered person has already responded to a prior complaint on the identical matter. This section should state clearly that, based on section 1072(d)(3), a response is not mandated. The second sentence of Section 1072(g)(4) is confusing. What does "provision" in the second sentence refer to? What is intended by the second sentence that is not covered by the first sentence of this section?

13. **Section 1072(j)** The reports described in this Section should not be made generally available to the public. What is the purpose of making them available to the public?

14. **Section 1073**. This Section concerns "inquiries" and places a multitude of new and detailed obligations on covered persons concerning any "inquiry" of a consumer. As noted above, given the extremely broad definition of "inquiry," covered persons may have to develop and maintain an entire database just for these requirements and will have to commit staff simply to address these requirements. This will prove costly, especially to the many small business that are covered persons which provide debt collection support to creditors and government agencies.

CAC's members strive to have communication with consumers. In the course of this communication, consumers who are legitimately attempting to address outstanding accounts may make a number of inquiries. These proposed regulations, because the term "inquiries" is so broadly stated, will mandate that debt collectors document and categorize even the most innocuous inquiries and store the records relating to each such inquiry for years to come.

The proposed regulations that mandate a detailed comprehensive tracking and chronicling of each and every dispute or inquiry – even if they are repetitive and/or clearly frivolous – will be unduly burdensome and very costly for covered persons, particularly for those that are small businesses. Additionally, since this is a strict liability environment, these requirements will prove to be damaging.

CAC appreciates the opportunity to provide these comments in response to the Notice regarding PRO 03-21. Please contact Tom Griffin, CAC's legal counsel [redacted] or [redacted]) with any questions you may have regarding the above comments.

Respectfully Submitted,

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Cindy Yaklin, Legislative Co-Chair
California Association of Collectors