

January 20, 2022

By Electronic Submission to regulations@dfpi.ca.gov with a copy to David.Bae@dfpi.ca.gov

Department of Financial Protection & Innovation

Attn: Araceli Dyson

2101 Arena Blvd

Sacramento, CA 95834

Re: Comments on Proposed Rulemaking under the California Consumer Financial Protection Law: Consumer Complaints and Inquiries (PRO 03/21)

Dear Commissioner Hewlett:

The Receivables Management Association International (RMAI) is pleased to submit our comments to the Department of Financial Protection & Innovation (DFPI or Department) on its revised version of proposed rulemaking concerning consumer complaints and inquiries related to the California Consumer Financial Protection Law (Act) as requested in DFPI's invitation for comments issued on December 22, 2022.

As background, RMAI is a nonprofit trade association that represents more than 600 companies that purchase or support the purchase of performing and nonperforming receivables on the secondary market. RMAI member companies work in a variety of financial service fields, including debt buying companies, collection agencies, collection law firms, originating creditors, brokers, international members, and industry-related product and service providers. RMAI's Receivables Management Certification Program (also referred to as RMCP)¹ and its Code of Ethics² set the "gold standard" within the receivables management industry due to their rigorous uniform industry standards of best practice which focuses on protecting consumers.

Rolled out in 2013, RMAI's Certification Program sets high and robust industry standards that seek to go above and beyond the requirements of state and federal law for the protection of consumers.³ While the program was first designed to certify debt buying companies, it has expanded to include

¹ Receivables Management Association International, *Receivables Management Certification Program* (February 3, 2022), publicly available at <https://rmaintl.org/GovernanceDocument> (last accessed June 17, 2022).

² Receivables Management Association International, *Code of Ethics* (August 13, 2015), publicly available at <https://rmaintl.org/about-rmai/code-of-ethics/> (last accessed June 17, 2022).

³ RMCP's Mission Statement reads in part, the certification program "is an industry self-regulatory program administered by RMAI that is designed to provide enhanced consumer protections through rigorous and uniform industry standards of best practice."

certifications for law firms, collection agencies, and vendors (e.g., brokers and process servers). Currently, 468 companies and individuals hold these internationally respected certifications. Presently, all the largest debt buying companies in the United States are RMAI certified, and we estimate that approximately 80 to 90 percent of all charged-off receivables that have been sold on the secondary market are owned by an RMAI certified company.

A review of the federal Consumer Financial Protection Bureau's (CFPB's) Consumer Response Portal (the Portal) shows that 97.97 percent of RMAI's certified companies (the vast majority being small businesses) are either complaint-free or have maintained a statistical zero-percent complaint rate on the Portal since the Department started tracking debt collection complaints/inquiries in July 2013.⁴ Only 2.27 percent of certified companies have a complaint/inquiry volume of greater than one percent with the remaining 0.76 percent of certified companies being rounded up to a one percent complaint/inquiry rate.

A before-and-after analysis of lawsuits filed against RMAI certified businesses found that after certification, litigation on average decreased by 20.8 percent in the seven-year span from 2012-2018. During the same time-period, litigation against all businesses in the receivables industry increased by 3.1 percent, with Fair Debt Collection Practices Act⁵ (FDCPA), Fair Credit Reporting Act⁶ (FCRA), and Telephone Consumer Protection Act⁷ (TCPA) lawsuits experiencing a 3.5 percent decrease, 13.5 percent increase, and a 26.7 percent increase, respectively. The correlation between RMAI certified businesses and a 20.8 percent decrease in lawsuits, compared to the industry as a whole, reinforces the beneficial effect of the program's high standards and its focus on compliance.⁸

RMAI'S Comments on Proposed Regulation 03-21

RMAI recognizes that DFPI has spent a great amount of time on the proposed regulation based on the level of edits that have been incorporated since the original comment period. The revised draft is admittedly better than the first draft, but additional work is required. RMAI stands by our original comments contained in our July 5, 2022 response that DFPI is pursuing an overly bureaucratic approach to complaint response and documentation without any consideration that the federal Consumer Financial Protection Bureau (CFPB) has already been operating a very sophisticated centralized consumer complaint portal for the past decade and no regard for the challenges faced by the small business community. However, we acknowledge that DFPI has reviewed and considered

⁴ See infographic: https://rmaintl.org/rmai_ftp/Complaints-Infographic.pdf (last accessed June 17, 2022).

⁵ 15 U.S.C. 1692 et seq.

⁶ 15 U.S.C. 1681 et seq.

⁷ 47 U.S.C. 227 et seq.

⁸ Pamela Hong, *The Impact of the Receivables Management Certification Program on Litigation*, Receivables Management Association International White Paper (June 2019), publicly available at https://rmaintl.org/wp-content/uploads/2019/06/Litigation_White_Paper.pdf (last accessed June 17, 2022). See also infographic: https://rmaintl.org/rmai_ftp/Litigation_Infographic.pdf.

the prior comments and has decided to continue down the path of a separate approach from that of our federal regulator. Consequently, RMAI will limit our comments to what changes DFPI can make to benefit the small business community.

Approximately 61% of RMAI's membership or 378 businesses would identify as a small business. Many of these small businesses have operations consisting of less than 10 employees, and in many instances 1-5 employees. The complexity of these rules appears to be more in-line with compliance resources contained in large corporations and banks. RMAI is concerned that for some small businesses, the adoption of this regulation will result in the termination of their operations due to the lack of ability to comply with the requirements contained therein due to their size.

Based on the current draft of the regulation, RMAI would strongly recommend the following items be addressed:

- (1) ***Exemption for Small Businesses*** – RMAI respectfully requests that DFPI identify an exemption threshold to protect small businesses. This threshold could be based on employee count and/or revenues. In reading these proposed regulations, we feel the drafter was picturing large corporations with hundreds or thousands of employees as the “typical” covered entity. That simply is not the case within the collection industry. The level of complexity in response deadlines, reports, and information tracking associated with complaints would be considered complex for a Fortune 500 company but literally impossible for a single person who owns and runs a small business. This rule will put RMAI's small business members out of business or force them to relocate to other states and cease operations on California accounts. While RMAI had previously suggested a threshold in its July 5, 2022 response, we implore DFPI to create a threshold that DFPI determines appropriate.
- (2) ***What Qualifies as a Complaint*** – RMAI respectfully requests that complaints be in writing and not oral. The intent of what is said in verbal communications can sometimes be subjective and result in different understandings between the two parties. For example, if a consumer says in response to a request for a payment “yeah right” is that a complaint? Some might say “yes” and some might say “no.” Another example, when a consumer says “I thought that was paid” but then realizes it was not paid and subsequently pays the debt. Again, some might say “yes” and some might say “no” as to whether it would be applicable. There are many examples where tone, intonation, and inflection could be the difference between a complaint and a question or even humor. At the very least, RMAI would request that DFPI require that the consumer use some key word or words to clearly identify it is a complaint so as to necessitate the additional work being required by this regulation.
- (3) ***5-Day Written Acknowledgement Requirement*** – RMAI respectfully requests the elimination of the 5-day written acknowledgement requirement using a cost-benefit analysis.

RMAI sees very little consumer benefit that would come from receiving a written acknowledgment that a complaint has been received but it would be provided at considerable expense to businesses. The fact is that the way the regulation is currently drafted, many if not a majority of complaints will likely come through oral communication. It would arguably be a far greater value for the consumer to be told contemporaneously on the phone, that their complaint has been filed than to receive a letter almost a week later. No other state has a requirement similar to this. Why? Because it is unnecessary for the consumer and burdensome for the business. It is also noteworthy that at the same time California wants to reduce its carbon footprint to protect the environment, DFPI will be forcing the printing and mailing of thousands of letters on a weekly basis. And many, if not a majority, of these letters will likely end up in landfills having been thrown out the same day they are received. While some might argue that large corporations can bare the cost of this additional “benefit,” the same cannot be said of small businesses.

(4) ***Exemption for Dual-Filed Complaints with the Company and on the CFPB Portal*** –

RMAI respectfully requests an exemption be added for complaints filed with the company when the complaint was also filed on the CFPB consumer complaint portal. Rather than forcing companies to attempt to comply with two different government agency requirements that are not in alignment, we respectfully request that the default be the comprehensive national complaint system. The data that California wants to obtain is readily available, at no cost, by the CFPB.

(5) ***Exemption for Mass-Filed Form Letters*** –

RMAI respectfully requests an exemption for mass-filed form letters by unscrupulous businesses. These robo-letters come from letter mills that simply push out tens of thousands of the same or substantially similar letters to businesses in an attempt to force an unintentional violation of complex state and federal statutes so as to bring suit. These nuisance letters are an unfortunate reality in the industry. It would add insult to injury if these spurious letters, that some state legislatures are attempting to crack down on, would qualify under the DFPI regulation as a valid complaint.

Conclusion

RMAI prides itself at being a balanced resource to legislatures and regulators. We have supported a number of consumer protection laws over the past decade in California, including the California Debt Collection Licensing Act. In addition, we have provided resources and information to the Department which we believe to have been helpful to the Department. Please hear us, when we inform you that this rule is not workable for the small business community. Please rethink the Department’s approach to the handling of complaints and inquiries. RMAI is not opposed to having robust requirements related to consumer protection but they have to be able to be reasonably operationalized. This proposed rule cannot be operationalized by small businesses.

RMAI sincerely appreciates the opportunity to comment on the proposed regulations. Please do not hesitate to contact me at dreid@rmaintl.org if you require further clarification on RMAI's comments.

Sincerely,



David Reid
RMAI General Counsel