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 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.

Application of Rulemaking to All Covered Persons.

In reviewing the rulemaking for PRO 03-21 as originally proposed and as modified, it is evident that the rulemaking is far too broad to apply to all covered persons. Different sets of covered persons have to comply with federal and state statutes, regulations, and applicable case law. In particular, debt collectors are already regulated by the requirements of a myriad of statutes and agencies (i.e., Rosenthal Act, FDCPA, Fair Credit Reporting Act, Telephone Consumer Protection Act, Bank Holding Company Act, Consumer Leasing Act, Electronic Fund Transfer Act, Equal Credit Opportunity Act, Fair Credit Billing Act, and Gramm-Leach-Bliley Act, among others.

Additionally, debt collectors are regulated by a host of government agencies, including the Consumer Financial Protection Bureau, the Federal Trade Commission, the Federal Communications Commission, and the DFPI.

The proposed rulemaking, in many instances is inconsistent with, and at times directly in conflict with, these statutes and regulations.

By virtue of the proposed rulemaking, debt collectors will be faced with conflicting standards and requirements resulting from a failure to synthesize the rulemaking with the multitude of existing statutes and regulations affecting debt collectors.

One set of rulemaking does not fit all covered persons.

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 1071(e)(1)**. 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."

3. **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 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" is a better title.

4. **<u>Section 1072(b)(1)</u>**. This Section requires a covered person to disclose the procedures for filing a complaint in its initial written communication and in an annual written (or electronic if applicable) communication with consumers. Requiring debt collectors to send these disclosures annually (rather than in the initial written communication) is excessive, unnecessary, and in direct conflict with existing law. Under the Rosenthal Act and the FDCPA, a debt collector must stop communicating with a consumer who sends "cease & desist" instructions to the debtor collector. Violating these instructions exposes the debt collector to strict liability and substantial damages. Is the DFPI asserting that the mandated annual communicating requirement amend, or supersedes, the Rosenthal Act, the FDCPA and corresponding case law?

   Further, requiring the disclosures found in Section 1072(b)(1) is certainly unnecessary since they are included in the initial communication with a consumer and required to be in a link on the debt collector's home page. Also, the inclusion of these disclosures in a final communication with the consumer indicating that the debt has been resolved can be confusing. 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 and add costs to the operations of the small businesses that comprise most debt collectors.

5. **<u>Section 1072(b)(2)</u>**. This Section requires certain information to be displayed prominently on the main page or home page of the covered person's website. 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?

6. **<u>Section 1072(c)(2)(A)</u>**. 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.) Failing to provide such a list will expose debt collectors to substantial damages in this strict liability environment.

7. **<u>Section 1072(c)(2)(B)</u>**. 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.

8. **<u>Section 1072(d)</u>**. Based on the uncertainty and ambiguity in the definitions of "complaints," "inquiries," and "disputes," and if the requirements of this Section apply to oral complaints, this regulation will add significant operational costs to covered persons. To satisfy the requirements of this Section, debt collectors anticipate having to hire at least one additional staff member which will add substantial costs to the debt collector. Also, 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.

9. **<u>Section 1072(d)(3)</u>**. This Section is unnecessarily narrow as it authorizes a covered person not to respond to a repetitive complaint <u>only if</u> the complaint is the <u>identical</u> 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?

15 U.S.C. Section 1681s-2(a)(F) permits a debt collector not to reply to a consumer who submits a complaint that is frivolous, irrelevant, substantially similar to a previously submitted dispute, or lacks sufficient information to investigate the dispute. Cal. Civil Code section 1789.34(b) permits a debt collector not to reply to a credit services organization regarding an account that has been paid, settled, otherwise resolved, removed, or if the documents described in section 1789.34(b)(3) or (b)(4) have been provided already.

Is the intent that the provisions of Section 1072(d)(3) will amend, or supersede, these statutes?

10. **Section 1072(f)**. This Section requires a covered person to identify an officer to monitor the complaint process who (along with the officer's designers) have the authority to "change, amend, or rescind the acts, omissions, decisions, conditions, or policies of the covered person or service provider, … and to forgive or extinguish any debt, charge, or obligation of a consumer."

    This does not reflect reality. The provisions of this Section fail to account for the role and legal standing of a debt collector. Accounts are assigned to debt collectors for the purpose of collections. Debt collectors do not own the accounts. The creditors retain ownership of the accounts, and the creditors retain the right to determine the resolution of the account.

    Debt collectors, as assignees of the accounts and not the owners, cannot comply with this Section.

    Additionally, this Section states that the designated officer is "ultimately accountable" for the effective operation and governance of the complaint process. This is concerning as it may be interpreted to impose liability on the officer individually.

11. **Section 1072(f)(1)**. 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.

12. **Section 1072(g)(1)(A)**. This Section requires a covered person to have "objective, good cause" to extend the time to respond to a complaint. What is meant by "objective, good cause?" Without a standard, this Section will expose collection agencies to substantial liability in this strict liability environment.

13. **Section 1072(g)(3)**. Refers to instances where the covered person has a "legal obligation to report suspected illegal conduct." What conduct is meant to be included in this?

14. **<u>Section 1072(g)(4)</u>**. 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?

15. **<u>Section 1072(j)</u>** 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?

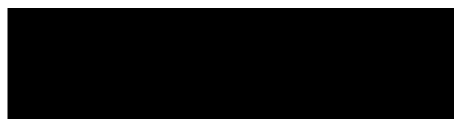
16. **<u>Section 1073</u>**. This Section concerns "inquiries" and places a multitude of new and detailed obligations on covered persons concerning any "inquiry" of a consumer. As noted above, given the extremely broad definition of "inquiry," covered persons may have to develop and maintain an entire 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 businesses that are covered persons that 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 (916-567-7389 or tgriffin@hsmlaw.com) with any questions you may have regarding the above comments.

Respectfully Submitted,



Cindy Yaklin, Legislative Co-Chair
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