



January 10, 2024

Department of Financial Protection and Innovation
Legal Division
2101 Arena Boulevard
Sacramento, CA 95814
Attn: DeEtte Phelps, Regulations Coordinator

Subject: California Association of Collectors Comments on Second Draft Text for Proposed Scope Rulemaking under the Debt Collection Licensing Act, released November 8, 2023 (PRO 05-21)

To Whom It May Concern:

The California Association of Collectors (“CAC”) is a not-for-profit California statewide association of collection agencies that collect debts assigned to them for collection purposes by original creditors, governmental agencies, and others. 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. Our organization supported the legislation that created the Debt Collection Licensing Act (Senate Bill 908, Wieckowski, Chapter 163, Statutes of 2020) and is supportive of regulations that implement that Act without imposing an unreasonably costly and excessively burdensome set of requirements on our members.

Although we appreciate some of the changes the Department has made to its PRO 05-21, we continue to have concerns about some of the proposal’s elements. The comments below are provided in chronological order.

Section 1850.1(j)(1)

Paragraph (1) of subdivision (j) of proposed Section 1850.1 lists three types of activities that do not constitute debt collection, when performed by an attorney or law firm. We have no concerns with the existing list but believe it is missing a category. Our members frequently retain attorneys to represent them in legal actions and would like to see the activities listed in 1850(j)(1) expanded to include “the representation of a licensee by an attorney in an action initiated by the licensee against a debtor plaintiff, when the attorney is acting on behalf of and at the direction of the licensee.”

Proposed Section 1850(j)(1)(A) already proposes to exempt from the definition of debt collection the representation of a creditor in an action initiated by a debtor plaintiff. It is illogical to us that the act of defending a creditor in a debt collection case would be exempted from the definition of debt collection,

but the act of representing a debt collector working on behalf of that same creditor would be considered debt collection. Both activities represent the practice of law rather than the act of debt collection, and we believe that both should be treated similarly.

Suggested change to 1850.1(j)(1):

Add a new (B) as follows and renumber existing (B) and (C):

(B) The representation of a licensee by an attorney in an action initiated by the licensee against a debtor, when the attorney is acting on behalf of and at the direction of the licensee;

Section 1850.2(a)

Subdivision (a) of proposed Section 1850.2 lists two types of debt that are not considered consumer debt for purposes of the Debt Collection Licensing Act. Although CAC agrees that the two types of debt cited by the Department in Section 1850.2 should not be considered consumer debt because they are not treated as such by the three nationwide credit reporting agencies, we are concerned that the Department's proposed regulation fails to list many other types of debt that are also excluded as consumer debt by those credit bureaus. We recommend the addition of a new paragraph (3) to proposed Section 1850.2(a) to reflect additional types of debt that are not considered consumer debt by the three national credit reporting agencies.

(3) Debt arising from traffic fines; parking tickets; criminal judgments, fines, and restitution orders; property tax liens; municipal water and sewer liens; garbage fees and services; library fines and fees; water fees and services; elementary, middle, and high school fees; religious institution fees; depository institution fees; bail bonds; check cashing fees; deferred deposit transactions; home appraisals; moving services; towing services; funeral services; household services, including lawn care, house cleaning, pest control, window cleaning, carpet cleaning, and pool cleaning and maintenance; dry cleaning fees; health and fitness centers; and private, non-accredited schools teaching skills or activities, such as dance, karate, or mathematics.

Section 1850.71(c)(1)

Paragraph (1) of subdivision (c) of proposed section 1850.71 requires each licensee to maintain "all employee records related to training, performance, and interactions with debtors." CAC understands that our members are responsible for developing and implementing policies and procedures related to employee training, performance reviews, and inquiry/complaint processing and resolution. We also understand that our members must be prepared to share those policies and procedures with the Department upon request, and to provide documentation that those policies and procedures have been implemented. However, we are concerned that, as currently drafted, paragraph (1) could violate the privacy rights of California employees by giving the Department access to performance reviews, payroll history, and benefits information. We urge the Department to redraft paragraph (1) to focus on licensee records, rather than individual employee files. We also remind the Department the phrase "and interactions with debtors" is unnecessary in paragraph (1) of subdivision (c), because subdivision (a) of proposed Section 1850.71 (a section with which we are not raising concerns) requires licensees to preserve all records of employee/debtor contact and attempted contact.

Suggested change:

~~(1) All employee records related to training, performance, and interactions with debtors. Copies of the licensee's policies and procedures related to employee training, performance reviews, and inquiry/complaint processing and resolution; evidence that such policies and procedures have been implemented; and copies of individual employee disciplinary records directly related to debt collection activity.~~

1850.71(c)(4)

Paragraph (4) of subdivision (c) of Section 1850.71 appears to require licensees to notify consumers when a licensee will no longer attempt to collect on a specific account. This requirement is unsupported by statute and does not reflect common industry practice. Absent a change in law expressly requiring a licensee to affirmatively notify a consumer that an account has been resolved and that no further collection efforts will be made by that licensee, we recommend that the department refrain from requiring licensees to retain records of such contact. Instead, we suggest that paragraph (4) be reworded, as follows:

(4) Records establishing that the licensee is no longer attempting to collect on accounts that have been resolved ~~or and that the consumer has been informed of the resolution and~~ that no further collection efforts will be made.

1850.71(d)(1)

The existing language of subdivision (d) of proposed Section 1850.71 requires a parallel change to the one suggested immediately above to 1850.71(c)(4). We also recommend that the Department add a category to subdivision (d) to reflect instances where an account is not resolved or sold, but where the debt is sufficiently old that the licensee has stopped reporting a debtor's nonpayment to a credit reporting agency.

Suggested change to 1850.71(d)(1):

- (1) The account has been resolved, ~~and the consumer has been informed that they no longer owe the debt and that~~ (2) no further contact or collection attempts will be made by the licensee, or
- (3) The account has been returned to the creditor after an attempt to collect on the account has previously been made, or
- (4) The account is sold and all collection attempts by the debt collector have ceased, or
- (5) The debt collector has ceased reporting on the debt to a credit reporting agency.

Thank you for the opportunity to provide these comments. Please contact Tom Griffin, CAC's legal counsel with any questions you might have about the contents of this letter.

Respectfully submitted,

Cindy Yaklin, Legislative Co-Chair
California Association of Collectors