



January 12, 2024

Department of Financial Protection and Innovation  
Legal Division  
Attn: DeEtte Phelps, Regulations Coordinator  
2101 Arena Boulevard  
Sacramento, CA 95834

**RE: PRO 05-21 - Second Draft Text For Proposed Scope Rulemaking Under The Debt Collection Licensing Act**

Dear DeEtte Phelps:

The California Bankers Association and the California Credit Union League appreciate the opportunity to comment on the Department of Financial Protection and Innovation's second draft text for rulemaking under the Debt Collection Licensing Act related to scope and document retention requirements of the DCLA.

### **SCOPE**

Within Section 1850.1 related to Scope of Licensing requirement, we appreciate subsection (b) which necessarily acknowledges a licensing exemption in section 100001, subdivision (b)(1) of the Financial Code. We respectfully request that within the newly created subsection (c) related to Original Creditors, that clarity is added to ensure that those entities that qualify for exemption within (b) maintain their licensure exemption. Absent this, there is concern that the new "original creditor" provisions could be construed as conflicting with that exemption. With that concern in mind, we respectfully suggest the following edits, intended to clarify that the exemption continues in places notwithstanding the original creditor provisions:

(c) (4) Nothing in this subsection shall be construed to limit or alter the provisions and exemptions set forth at Financial Code section 100001, subdivision (b)(1).

-or-

(c) Original creditors: A creditor, that is not an exempt listed entity or employee acting within the scope of their employment under (b), including a provider of non-financial services, seeking, in its own name, repayment of consumer debt arising from a consumer credit transaction between itself, in its own name, and a customer, is not engaged in the business of debt collection, for purposes of licensure under the Debt Collection Licensing Act, unless it meets one or more of the following criteria:

## **DOCUMENT RETENTION**

Similarly, we respectfully suggest that Section 1850.71 related to record keeping and document retention may benefit from additional clarification. It is our interpretation that as drafted, Sections (c) and (d) appear to somewhat be in conflict with one another. Overall, we believe these provisions would benefit from additional specificity about which records and information needs to be maintained in instances when an account is returned for reasons other than “resolved.”

The draft proposes the following parameters:

- (c) Each licensee shall keep and maintain the following information:
  - (1) All employee records related to training, performance, and interactions with debtors.
  - (2) The records created pursuant to subdivision (a).
  - (3) All records of fees, interest, and any charges on debtor accounts accrued since acquisition of the account by the licensee.
  - (4) Records establishing that the licensee is no longer attempting to collect on accounts that have been resolved and that the consumer has been informed of the resolution and that no further collection efforts will be made.
- (d) Each licensee shall retain the information in subdivision (c), in a form readily accessible, for at least three years after any of the following, whichever occurred last:
  - (1) The account has been resolved, and the consumer has been informed that they no longer owe the debt and that no further contact or collection attempts will be made by the licensee, or
  - (2) the account has been returned to the creditor whether or not payments have been made, or
  - (3) the account is sold and all collection attempts by the debt collector have ceased.

Section (c)(4) states that, “Each licensee shall keep and maintain records establishing that the licensee is no longer attempting to collect on accounts that have been resolved and that the consumer has been informed of the resolution and that no further collection efforts will be made.” Section (d) states that the licensee shall retain the information identified in section (c) when any of three factors have occurred. The first, related to the consumer being informed that they no longer owe the debt and that no further contact or collection efforts will be made by the licensee, appears to be in line with the four data points outlined in Section (c).

However, the second factor, related to returned the account to the creditor whether or not payments have been made, as well as the third factor, related to an account that is sold and all collection attempts by the debt collector have ceased, both may create conflict or ambiguity because neither circumstance constantly meets the data point in Section (c)(4),

as an account can be returned for any number of reasons but does not necessarily signal that the account is resolved. In this situation, would the licensee be required to maintain only the data points as outlined in (c)(1), (c)(2), and (c)(3)? We respectfully request additional clarity on what is expected when accounts are returned/recalled for reasons other than "resolved."

We reiterate our appreciation for the opportunity to provide comments on this proposal. Should you have any questions regarding our comments, please do not hesitate to contact us.

Sincerely,

Melanie Cuevas  
VP, Government Relations  
California Bankers Association  
916-947-1726  
[mcuevas@calbankers.com](mailto:mcuevas@calbankers.com)

Rob Wilson  
SVP, State Government Affairs  
California Credit Union League  
916-601-7626  
[robertw@ccul.org](mailto:robertw@ccul.org)