



California Financial
Services Association

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Since 194

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Department of Financial Protection and Innovation
Attn: Araceli Dyson
2101 Arena Boulevard
Sacramento, California 95834

RE: PRO 01-21 – Registration Requirements Under the CCFPL

Dear Ms. Dyson;

On behalf of the California Financial Services Association (“CFSA”), thank you for the opportunity to provide comments on the Department of Financial Protection and Innovation’s (DFPI) March 17, proposed rulemaking (PRO 01-21) under the California Consumer Financial Protection Law (“CCFPL”). CFSA represents financial institutions of all sizes across many of the industries DFPI oversees. We support the Department’s effort to require registration and reporting for the various industries included in this rulemaking. We appreciate the opportunity to provide comments on this proposed rulemaking. Our focus will be on the provisions pertaining to Debt Settlement Services.

Today, many consumers entering into settlement agreements are not made better by working with Debt Settlement Services. Consumers are increasingly being targeted to settle accounts for which they are in good standing, resulting in irreparable harm to their credit scores. Further, for consumers who fall just a month or two behind on their payments, there are often better options with the creditor, such as modifications to loan payment plans and deferments, which can provide borrower relief without negatively impacting their credit. Debt Settlement Services provide consumers with limited settlement outcomes, often hovering near 50% of the original balance while charging a fee equal to 20 – 25% of the debt settled, essentially leaving consumers owing 70 – 75% of the original amount owed. Now, Debt Settlement Services are adding a business practice of making direct loans to customers for whom they have just settled debt, creating new indebtedness that further erodes the already modest discount to consumers. These loans offered by Debt Settlement Services or their 3rd party affiliates often have APRs that create a new debt obligation at nearly the same amount as the original loan held by the debtor, trapping consumers in a cycle of debt. Additionally, consumers may see drops in their credit scores due to missed loan payments, while Debt Settlement Services are attempting to settle their debt. For consumers that fail in the Debt Settlement Services plan, their only option is filing for bankruptcy after being financially depleted by debt settlement providers. The reporting requirements suggested to Sections 1001 and 1042 of the proposed rules below will allow bad actors in the space to be identified and ensure consumers are presented with the best options when faced with impediments to making their loan payments on time.

Our recommended amendments are highlighted in yellow in the language of the rule as proposed below and include three key elements:

Delinquency Reporting – Debt Settlement Service providers regularly enroll consumers who have not communicated a hardship situation or are not substantially delinquent. These customers are well suited for borrower’s assistance programs with their creditors. Most Debt Settlement Service providers base their fee off of a percentage of total amount of debt enrolled in the program, which incentivizes encouraging consumers to enroll more debt regardless of the delinquency status. This causes consumer harm by damaging credit profiles. Reporting delinquency at enrollment can highlight which Debt Settlement Service providers are enrolling customers at no or early delinquency thereby increasing the risk of consumer harm.

Lending Activity - Debt Settlement Service providers have begun marketing loans to consumers as part of their services. Debt Settlement Service providers regularly encourage consumers to default on current loan obligations in order to enroll them in a debt settlement plan, ruining their credit. Debt Settlement Service providers and their affiliates position themselves as lenders of last resort, creating a situation where consumers have no choice but to finance their debt settlements with Debt Settlement Service providers. Debt Settlement Services are quickly becoming “debt swapping” services where consumers swap their current loans for one with a Debt Settlement Service provider, bringing into question the true goals of these services. An understanding of the lending practices of these companies can provide insight into if these companies actually achieve any real savings for consumers.

Bankruptcy – By their own industry data, Debt Settlement Service providers are typically unable to settle all of the debts owed by a consumer. Many of these consumers are forced into bankruptcy after failing out of the debt settlement plan. Debt Settlement Service providers often lead consumers down a path of financial ruin with bankruptcy being a nearly inevitable conclusion. Accurate bankruptcy reporting by Debt Settlement Service providers can provide evidence of product efficacy and highlight possible consumer harms.

Thank you in advance for your consideration of our comments. If you have any questions, please do not hesitate to contact us.

Sincerely,

Scott Govenar

Section 1000

(j) “Registrant” means any person who is registered under the California Consumer Financial Protection Law, including but not limited to an affiliate of the registrant.

**California Financial Services Association Amendments to PRO 01-21 –
Registration Requirements Under CCFPL – As Proposed March 17, 2023**

§ 1001. Definitions – Debt Settlement Services.

With respect to debt settlement services, these terms shall have the following meanings:

(a) “Charges” mean all amounts contracted for or received by a person in connection with the person’s provision of debt settlement services to a consumer, and amounts contracted for or

received by payment processors in connection with a person’s provision of debt settlement services.

(b) “Debt settlement services” means any of the following:

(1) Providing advice, or offering to act or acting as an intermediary, including, but not limited to, offering debt negotiation, debt reduction, or debt relief services between a consumer and one or more of the consumer’s creditors in connection with a consumer’s non-mortgage debt, if the primary purpose of that advice or action is to obtain a settlement for less than the full

amount of the debt, or a reduction in the interest rate or payment amount associated with a consumer’s debts; or

(2) Advising, encouraging, assisting, or counseling a consumer to accumulate funds in an account for future payment of a reduced amount of debt to one or more of the consumer’s creditors.

(c) “Payment processor” means a person who provides payment processing services.

(d) “Payment processing services” means accepting, maintaining, holding, or distributing funds, or facilitating the acceptance, maintenance, holding, or distribution of funds, on behalf of a consumer for the purpose of facilitating debt settlement services.

(e) “APR” means the Annual Percentage Rate as defined by the federal Truth in Lending and its implementing regulation, Regulation Z.

NOTE: Authority cited: Section 90009, Financial Code. Reference: Sections 90003, 90005, and § 1042. Annual Reporting – Debt Settlement Services.

If the registrant offers or provides debt settlement services under its registration, the registrant’s annual report shall include the following information relating to the debt settlement services provided to California residents in the prior calendar year:

(a) The number of California residents who had an existing contract for debt settlement services in effect or who contracted with the registrant for debt settlement services in the prior

calendar year, as well as how delinquent each consumer was at the time they entered into a contract for debt settlement services, but whose contract is no longer in effect.

(b) For the residents identified in subdivision (a) of this section, the average number of debts each resident contracted for debt settlement services with the registrant.

(c) For the residents identified in subdivision (a) of this section, the average dollar amount of debt per resident and the total dollar amount of debt of all residents who contracted for services with the registrant based on the total debt balances upon execution of the contracts with the registrant.

(d) For the residents identified in subdivision (a) of this section, the average dollar amount of charges paid over the contract term per resident and the total dollar amount of charges paid by all residents, including charges paid to payment processors.

(e) For the residents identified in subdivision (a) of this section, the average number of debts per resident and the total number of debts for all residents who contracted for services with the registrant in which the resident, over the contract term, has accepted a settlement with their creditor and made at least one payment pursuant to that settlement.

(f) For the debts for which a resident identified in subdivision (a) of this section has accepted a settlement at any time with their creditor and made at least one payment pursuant to that settlement, the average amount owed upon execution of the contract with the registrant, and the average settlement amount based upon the total of all payments due under each settlement.

(g) For the debts for which a resident identified in subdivision (a) of this section has accepted a settlement with their creditor and made at least one payment pursuant to that settlement over the contract term, the average amount of time between execution of the contract and the first payment under each settlement.

(i) For residents identified in subdivision (a) of this section, the number of consumers who obtained an extension of credit directly from the registrant, the aggregate amount of such extensions of credit, and the average APR of such extensions of credit.

(k) For residents identified in subdivision (a) of this section, number of consumers who were referred by the registrant to an unaffiliated third party for a potential extension of credit.

(l) For residents identified in subdivision (a) of this section, the number of consumers that filed for bankruptcy protection under any provision of the United States Bankruptcy Code in the prior calendar year.