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July 3, 2024

By e-mail to regulations@dfpi.ca.gov

Department of Financial Protection and Innovation

Attn: DeEtte Phelps, Regulations Coordinator

2101 Arena Boulevard

Sacramento, California 95834

Subject: Comments on PRO 01-23: DCLA Annual Report

To Whom It May Concern:

This letter is submitted by the California Financial Service Providers ("CFSP") in response to the Notice of Modifications to Text of Proposed Regulations under the Debt Collectors Licensing Act (PRO 01-23), issued on June 18, 2024. CFSP is a trade association representing business entities licensed and/or operating under the Consumer Financing Law, the California Deferred Deposit Transactions Law, the Check Cashers Law, and the Money Transmitters Law. CFSP has been serving our members since 1956, and currently represents business entities holding several hundred licenses issued by the Department. CFSP appreciates the opportunity to comment on the Proposal, but chafes at the short time frame to do so.

First, we must point out that this proposal addresses what appears to be a significant compliance issue and potential expense for the credit industry in California. And yet, we are only given a 15-day comment. This is an unreasonably short period time. The previous comment period on this very regulation was 60 days. One of the universal complaints of the businesses regulated by the Department is that the Department is cavalier about the burden upon a business entity of a regulatory demand that requires immediate responses to the Department, often entailing the compilation of large amounts of data, complex legal analyses, or both. The Department routinely make such demands on a short time frame; then takes no action for months or years; then again demands a large amount of information on a short time frame. So, this is all of a piece with this pattern and practice of disregard for the timing needs and timing issues of for-profit businesses - i.e., the tax base - of the State of California. Accordingly, we respectfully but firmly object to the rushed timeframe to respond.

Second, nothing in the proposal addresses first-party lenders, such as our members, who are licensed under the California Deferred Deposit Transactions Law (the "CDDTL"). As CFSP members are all first-party, balance sheet lenders, they need to know whether they fall into subsection (1), (2) or (3) of proposed Section 1850.50(p). We note that First-party lenders would have fallen within the deleted proposed Section 1850(p)(4). Even there, though, there was an inherent error in the proposed language. The language referred to "(4) For a first-party collector, this is equal to the amount it receives in fees and other payments from debtors that it would not have received had that had been paid on time . . . ." For CFFTL lenders, this can only be the statutory $15 late charge. However, we submit that that statutory late fee is set by law in the CDDTL, it is unfair for it to be a basis for additional assessment under the DCLA. Likewise, it is also unfortunate that the sentence phrase "First-party collector means a person or entity that collects a debt directly owed to it" has disappeared from the DCLA regulations, as that is exactly what the true credit industry, including CDDTL-licensed CFSP members, do: as opposed to the debt collection industry into which a binary implementation the DCLA as proposed to drags direct lenders.

Accordingly, we next parse the currently proposed language of Section 1850.50(p) for its applicability to bona fide first party lenders such as CDDTL licensees:

(1) "For a debt buyer as defined in Civil Code section 1788.50 . . . ." This language clearly does not apply to first party lenders;

(2) "For a purchaser of debt that has not been charged off or debt that is not in default, ... This language clearly does not apply to first party lenders, who have not purchase their loans but made their loans themselves;

(3) "For a third-party collector *and all other debt collectors* . . . . (Emphasis added.)" This must be what first-party lenders are. This subsection goes on to state that these "collectors'" "net proceeds" for DCLA Annual Report purposes "are equal to the amount a collector receives from its clients, regardless of fee structure, before deducting costs and expenses. For purposes of this section, 'client' means the company on whose behalf the third-party debt collector has been contracted to collect on an account." Therefore, since a first-party lender has no such "clients," its net proceeds will, by definition, be zero. If this conclusion is not what the Department intends mind, then it needs to rewrite this provision so that it is comprehensible.

In this regard, though, we wish to note that we will strenuously object to first-party lenders being jammed into a square hole so that their "net proceeds" will, as a practical matter, be based on the amounts of performing obligations they are servicing for their own account. We posit that to might constitute to an unlawful tax on their business operations in contravention of Proposition 26. Due to the short comment period, we have not had time to fully develop that issue, but we mention it here to avoid any suggestion of waiver.

We believe that nothing in the DCLA requires the Department to treat to develop and apply unitary rules that jam the vastly different business models of debt buyers, professional debt collectors, first-party lenders, and holders and servicers of performing first-party debt into a single unvarying compliance model. This particular instance, which appears to be setting the stage for

basing DCLA annual assessment fees on the total amount of performing assets held in the portfolio of first-party lenders and holders of performing debt, is an illustrative example of that approach with significant dire consequences. We must point out to the Department that the effect of such an increase in the cost of credit operations to lenders, obligation purchasers, and servicers, will inevitably have the effect of increasing the cost of credit to consumers of those credit products. Thus, this well-intentioned effort will have exactly the opposite effect of consumer protection: rather, it will make credit less, rather than more, available to consumers, and decrease, rather than increase, competition in the consumer credit space.

Due to the short response deadline, we have not been able to work with our members to develop alternative language that satisfies all of our members' concerns. However, we will posit something like this:

"(#) For persons who are defined as debt collectors because they are either first-party lenders or assignees standing in the shoes of first-party lenders, and who hold and/or collect on portfolios that consist primarily of performing debt obligations, this is equal to the amount of collection-related fees it collects during the reporting year, excluding the principal and the contracted-for interest on the obligation, but including the differential between the contracted-for interest and any default-rate attributable interest."

Accordingly, CFSP urges the Department to redraft Section 1850.50(p) in light of the above comments.

Sincerely,

Tom Leonard

Executive Director

cc: mary.tome@dfpi.ca.gov