

February 6, 2024

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

Sent via electronic mail to regulations@dfpi.ca.gov

RE: PRO 01-21

Dear Ms. Dyson,

On behalf of the American Association for Debt Resolution (“AADR”)¹, the leading trade association representing the debt resolution industry, we appreciate the opportunity to submit comments in response to the amended proposal by the Department of Financial Protection and Innovation (“the DFPI” or “the Department”) to adopt regulations implementing elements of the California Consumer Financial Protection Law (CCFPL). The AADR represents companies committed to helping financially challenged consumers regain their financial wellbeing by negotiating less-than-full-balance settlements of consumer’s unsecured debts. We welcome a registration regime for debt resolution providers in California.

The AADR submitted comments to the Department in response to its initial proposed registration rulemaking in late 2021, to the revised proposal in May 2023, and finally to the second revised proposal in November 2023. In the November letter we limited our comments to our primary concerns with the proposal, which included: 1) the misalignment between the application of the proposed rule and the existing statutory definition; and 2) the critical importance of the Department collecting data from other options utilized by consumers in financial hardship to obtain a holistic view of the marketplace. The sections of the amended rule proposal that relate to our two stated concerns were unchanged—and the AADR respectfully submits that these matters should be revisited and changed in the final rule.

Applicability of the Debt Resolution Registration Regime

As discussed in previous comments, the Department’s current proposal would require a broad set of market participants *who do not provide debt resolution services* to register with DFPI. This construct will not further consumer protection but will create additional work and expense for the Department.

We appreciate the attempt to resolve this inconsistency by amending Section 1010 of its most recent proposal as follows:

- (a) No person shall engage in the business of offering to provide or providing subject products to California residents without first registering with the Commissioner pursuant to this subchapter.

¹ The American Fair Credit Council became the American Association for Debt Resolution on August 1, 2023.

We do not believe, however, that the language as amended aligns with the statutory definition of “debt settlement services.” California’s robust law governing the debt resolution industry was enacted following a multi-year negotiation among the legislature, the debt resolution industry, consumer advocacy organizations and other stakeholders. Section 1788.301 of the California Civil Code defines debt settlement services as (emphasis added):

(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, if the primary purpose of that advice or action is to obtain a settlement for less than the full amount of the debt.

The statutory definition applies to persons who *actually offer* to act as debt resolution providers. The Department’s definition of debt settlement services largely mirrors the above. However, the proposed rules would apply to persons “offering to provide or providing” debt settlement services. This definition would still require the registration of firms that do not actually offer to act, or actually act, as debt resolution services providers. This could lead to consumer confusion and an unnecessary compliance burden with no additional consumer benefit.

Moreover, since Section 1021(15)(c) of the proposed regulations requires that registrants disclose “...third-party brokers or lead generators that the applicant uses to acquire potential California consumers for its products or services”, retaining this requirement would result in substantial duplication of reporting.

AADR appreciates the Department’s attention to this statutory definition and attempt to improve it; however, to more effectively align DFPI’s proposed registration requirements with the existing statutory definitions, the Department should amend Section 1010 as follows:

(a) No person shall engage in the business of ~~offering to provide or~~ providing subject products to California residents without first registering with the Commissioner pursuant to this subchapter.

AADR recognizes that, having raised this concern previously, the definition of “debt settlement services” was not changed in the rule proposal. If our interpretation of the discrepancy between the statutory definition is incorrect or if the Department is able to further explain its reasoning for creating a new definition for “debt settlement services”, we welcome the opportunity to discuss this matter further.

The Need for a More Holistic View of Consumer Outcomes Across a Wider Range of Products

As discussed in previous comments, the DFPI’s proposed rules contain a series of annual reporting requirements for debt resolution registrants. These requirements, which include the total number of consumers in California a registrant has enrolled in a debt resolution program, the total amount of debts enrolled by those consumers, and the total amount of fees per program participant paid over the term of their contract with the registrant, will provide the DFPI with a comprehensive view of the significant value debt resolution service providers deliver to tens of thousands of

Californians each year. We expect that the data collected by the Department will corroborate, as independent academics have concluded that:

- Debt resolution service providers save California consumers hundreds of millions of dollars each year by securing settlements that substantially reduce the amount they owe to their unsecured creditors;
- Debt resolution service providers provide Californians significant value, with \$2.62 of debt reduction for every \$1 in fees assessed;
- More than 75% of Californians who enroll in a debt resolution program achieve a settlement within the first six months of their enrollment; and
- California consumers who enroll in debt resolution programs realize meaningful net savings, inclusive of fees.²

While we remain supportive of providing DFPI annually with the data proposed under the rule, we respectfully request the Department exercise its authority to collect comparable data from providers of other products and services available to Californians in financial hardship to address their unmanageable debt.

A comparison of consumer outcomes from debt resolution programs with results from credit counseling, bankruptcy, creditor loan modifications, and short-term consumer loans, among other market alternatives, would enable DFPI to monitor comparative performance across the range of different options available to Californians in financial hardship. A holistic view of the costs and value of these products and services would provide essential data as DFPI implements the CCFPL.

The AADR therefore respectfully proposes that DFPI consider collecting analogous data annually from providers of other services, not just from debt resolution firms, so that the Department can have a more complete and comparative picture of the value debt resolution companies play in California.

Thank you once again for considering the AADR's perspective. We remain committed to working alongside the Department to ensure that Californians in financial hardship continue to have access to the significant benefits provided by the debt resolution industry. To the extent that the AADR or our members can provide any additional perspective that might inform the Department's regulatory considerations, I hope that you will not hesitate to contact me.

Sincerely,

Denise Dunckel
Chief Executive Officer

Cc: Peggy Fairman, California Department of Financial Protection and Innovation

² See "Options for Consumers in Crisis: An Economic Analysis of the Debt Settlement Industry, 2021 California Edition" available at <https://aa4dr.org/wp-content/uploads/AFCC-2020-California-Data-1.pdf>.