

June 8, 2021

Department of Financial Protection and Innovation
ATTN: Sandra Sandoval
300 S. Spring Street, Suite 15513
Los Angeles, CA 90013

Re: PRO 02/20 — Proposed Regulations Under the Debt Collection Licensing Act

Dear Ms. Sandoval:

On behalf of the American Financial Services Association (“AFSA”),¹ thank you for the opportunity to provide comments on the Department’s April 23 Proposed Regulations Under the Debt Collection Licensing Act (PRO 02/20). AFSA represents financial institutions of all sizes across many of the industries DFPI oversees, including institutions that may be required to apply for licensure under the Debt Collection Licensing Act as well as institutions that hold other license types from DFPI. We believe clear rules that take into account existing laws benefit consumers and financial institutions alike, and we look forward to engaging with the Department throughout the rulemaking process.

Exemptions

Given the extensive requirements under state and federal law with which existing licensees and other federally chartered financial institutions already comply, additional requirements under the Debt Collection Licensing Act would be duplicative and unnecessarily create a significant compliance burden with limited consumer benefit. The legislature recognized this reality, as evidenced by the Act’s list of exempt entities in Part 100001(b). Accordingly, any proposed rulemaking should also reflect this fact by reinforcing the exemption and clarifying that the exemption will be interpreted as broadly applicable to these entities and their affiliates engaging in collections activities relevant to their existing licenses.

Definitions

Affiliate

The proposed regulations broadly define “affiliate.” Based on the structure of such companies, we believe DFPI should consider “affiliate” exceptions for securitization entities and holding companies.

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

Branch Office

We request that the rules be amended to clarify that the definition of branch office does not include an employee working remotely from home. Employees working from home are not setting up a separate branch office. Although they are performing the same telephone/internet-based functions they would have performed if they were sitting in the branch office, these employees are not meeting customers in their homes or keeping records in their homes. Importantly, employees are supervised as they would be at the branch office. Allowing employees to perform telephone/internet-based functions from home merely allows a licensee to be more flexible in its employment practices while still providing the same secure services to the public, and we believe the rules should be clarified to ensure this flexibility is available.

Debt Collection Activity

We believe DFPI should clearly define what constitutes debt collection and debt collection activity, including whether debt collection starts only after an account has been charged off, or if it also includes debt on current accounts or accounts recently in default?

Appointment of Commissioner as Agent for Service of Process

We request additional flexibility with regard to the requirements for service of process. A licensed entity should have the option to use the Commissioner, the licensed entity itself, or a third party for service of process.

Personal Information of Certain Officers

The proposed regulations would require sharing of significant personal information of licensee principal officers and others, including their social security numbers and fingerprints. We encourage DFPI to continue to weigh the benefits of gathering such information in such a way as to respect the individual's privacy rights and consider the significant risks associated with a possible data breach. Further, DFPI should consider exemptions for SEC 1934 Act filers who are scrutinized public companies. Additionally, the rules should more clearly define what qualifies an employee as management for information purposes. While these roles might be clear for smaller entities, larger companies might have a more difficult time identifying specific relevant individuals.

Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 202-469-3181 or mkownacki@afsamail.org.

Sincerely,



Matthew Kownacki
Director, State Research and Policy
American Financial Services Association