



December 12, 2025

Department of Financial Protection and Innovation

*By e-mail to [regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov)*

Legal Division

Attn: Diana Pha, Regulations Coordinator

651 Bannon Street, Suite 300

Sacramento, CA 95811

**Re: Third Draft Text of Proposed Regulations; Debt Collection Licensing Act  
PRO 05-21**

Dear Ms. Pha,

On behalf of the American Financial Services Association (“AFSA”)<sup>1</sup> and the California Financial Services Association (“CFSA”), we thank you for the opportunity to provide comments on the Department’s June 17 modified text for the Proposed Scope Rulemaking Under the Debt Collection Licensing Act (PRO 01-23).

AFSA and CFSA represent 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 (DCLA) and institutions that hold other license types issued by DFPI. We believe clear rules benefit consumers and financial institutions alike.

We note that our letters of January 15, 2024 and July 2, 2024, regarding PRO 05-21, remain pertinent, we restate some salient points below, and we appreciate the Department’s consideration of past comments. We also appreciate the steps DFPI has taken to clarify definitions and narrow the scope of the rules throughout this process.

As an overriding issue, we remain concerned that the Department’s proposed regulation and its interpretation of the DCLA do not properly address the role of indirect automobile financing in California. As the Department is aware, this has caused significant confusion amongst our memberships regarding calculating “net proceeds” in connection with their annual reports, and which has resulted in significant curative labor by both the Department and our memberships in the last two months.

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<sup>1</sup> 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.

The Department's apparent position on indirect auto financing is that the 1<sup>st</sup> Party Creditor exemption would not apply because the credit that our members extend is not part of credit extended to finance goods or services "it provided" under section 1850.1(d)(1). Instead, the Department's position is that the selling/originator "provides" and finances the goods and services of which our members thereafter take assignment. This does not recognize the proper nature of automobile purchasing in California and the role of our memberships. Indirect automobile finance companies who take assignment of consumer paper from automobile dealers at the time of origination and when the account is not delinquent should be considered 1<sup>st</sup> Party Creditors by the Department and its regulations. This also is in-line with the federal FDCPA.<sup>2</sup> We recommend that the Department amend its proposed regulation section 1850.1(d)(1) to state, ". . . it provided or that it's assignor provided when the account was not in default at the time of the assignment." And, even for such 1st Party Creditors who would be exempt, we do not see the distinction regarding why such otherwise exempt creditors would need to assign any accounts that go more than 90 days past due to a Licensed Collector, who would then be obligated to identify themselves and give a whole new set of notices to consumers who still may be desirous of salvaging their account notwithstanding their temporary financial difficulties. Referring every account at 90 days past due to a licensed debt collector increases the expense to creditors and unnecessarily alarms consumers at the critical time when creditors are attempting to work with those consumers to bring them back into the fold. We do not see the same problem with charged-off accounts and therefore recommend that the Department simply delete section 1850.1(d)(2)(A) and use charged-off debt as the triggering event.

Nevertheless, given the Department's current position that indirect automobile financing involves servicing by a 3<sup>rd</sup> Party, which triggers the exemption in section 1850.1(e), the same problem identified remains with respect to accounts more than 90 days past due. We therefore recommend, again, that the Department use the charge-off trigger identified above, as follows:

(e) A person solely servicing debts on behalf of an original creditor, as described in subdivision (c), that ~~are less than 90 days past due and~~ have not been charged off is not engaged in the business of debt collection for purposes of licensure required to be licensed under the Debt Collection Licensing Act.

What the Department's proposed regulations appear to exempt thereafter then negate the same exemption in section 1850.1(e)(2). Indirect automobile companies furnish information to the consumer reporting agencies under circumstances highly regulated by federal and state law. Users of credit reports rely on a robust and accurate credit reporting system to make credit determinations. Similarly, indirect automobile finance companies, unfortunately, sometimes must repossess collateral when consumers default. Taking security in the collateral protects the

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<sup>2</sup> *Zamora v. Bridgecrest Credit Co., LLC*, No. 24-CV-236 TWR (DEB), 2024 WL 4094281, at \*11 (S.D. Cal. Sept. 5, 2024); *Tu v. Camino Real Chevrolet*, No. 12-cv-9456, 2013 WL 140278, at \*2 (C.D. Cal. Jan. 9, 2013) (concluding defendant in the business of accepting assignments of installment sales contracts from automobile dealerships was not a debt collector under the FDCPA)

finance company's financial interest and guarantees payment by the consumer. The Department's proposed exemption exclusion in section 1850.1(e)(2), however, would put automobile finance companies in a Hobson's choice. Our members can continue to report consumer account histories to the consumer reporting agencies and protect their financial interest on consumers' default but must subject themselves to licensure, examination, and licensee fees by the Department. Or, members can forego consumer reporting and repossession of collateral for 90 days in order to be exempt from licensure to the detriment of the consumer reporting ecosystem and putting collateral in jeopardy. The Department's proposed structure reflects no proper regulatory concern, puts licensees and non-licensees on different competitive levels, and interferes with regulatory schemes such as the Fair Credit Reporting Act and California Consumer Credit Reporting Agencies Act.

Again, we recommend that the Department recognize indirect finance companies as 1<sup>st</sup> Party Creditors under exemption 1850.1(d)(1) and/or delete the exemption exclusion set forth in section 1850.1(e)(2).

#### **Proposed Section 1850(j): "Employee."**

Our previous comments to the Department regarding its definition of employee have apparently received no purchase, as no revisions have been made to the proposed regulation. We again reiterate our concern that additional clarification is necessary to protect the ability of debt collectors to utilize the services of non-W2 workers, including 1099 workers, temporary help from a staffing agency, or a collection agency employee who works for a creditor to collect in the creditor's name at the creditor's office under the creditor's supervision. Including these additional workers would be consistent with how the FDCPA has historically been applied (e.g., considering workers collecting in the name of an original creditor to be "de facto" employees of such creditor). Accordingly, we respectfully reiterate our previous request that the proposed definition be updated.

#### **Proposed Section 1850(j): "Engage in the Business of Debt Collection."**

We also respectfully request clarification regarding the Department's proposed definition of "engage in the business of debt collection." Proposed subsection (j) provides:

(j) "Engage in the business of debt collection": A person engages in the business of debt collection and is required to be licensed pursuant to section 100001, subdivision (a) of the Financial Code if the person (A) engages in debt collection for a profit or gain that is earned solely from the act of collecting past due amounts, when the person began collecting when the credit obligation was in default, and (B) the activity is of a regular, frequent, or continuous nature. Advertising or otherwise offering the service of debt collection for remuneration constitutes engaging in the business of debt collection."



Clarification is needed to confirm that this definition does not inadvertently sweep in subsidiaries or affiliated entities of a creditor whose compensation is not earned solely from the act of collecting past due amounts, or that begin servicing accounts prior to default, and whose activities are ancillary to the extension and servicing of credit. Absent such clarification, the proposed language could be read to expand licensure requirements beyond the Department's stated intent and beyond the scope historically applied under the DCLA and the FDCPA.

### **Attorneys or Law Firms**

We applaud the proposed amendments to Section 1850.1 related to attorneys and law firms representing a creditor. We appreciate DFPI's position that an attorney representing our members in court can "only" be performed by a licensed attorney. Thus, we understand that attorneys engaged in defending actions initiated by consumers would not be required to obtain a license, whether the attorney is defending an action, arbitration, or pre-litigation demand initiated by a consumer even if the attorney initiates a permissive or compulsory counterclaim on the debt in such consumer-initiated litigation.

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 us.

Sincerely,

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