August 29, 2022
Re: PRO 05-21

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

Submitted via email to: regulations@dfpi.ca.gov

To Whom it May Concern:

The Consumer Relations Consortium (CRC) is an organization comprised of more than 60 national companies representing creditors, data/technology providers, and compliance-oriented debt collectors that are larger market participants. Established in 2013, CRC is dedicated to a consumer-centric shift in the debt collection paradigm. It engages with all stakeholders—including consumer advocates, federal and state regulators, academic and industry thought leaders, creditors, and debt collectors—and challenges them to move beyond talking points. The CRC's focus is on fashioning real world solutions that seek to improve the consumer's experience during debt collection. CRC's collaborative and candid approach is unique in the market.

CRC members exert substantial positive impact in the consumer debt space, servicing the largest U.S. financial institutions and consumer lenders, major healthcare organizations, telecom providers, government entities, hospitality, utilities, and other creditors. CRC members engage in millions of compliant and consumer-centric interactions every month at all stages of the revenue cycle. Our members subscribe to the following core principle:

"Collect the Right Debt, from the Right Person, in the Right Way."

We appreciate the opportunity to respond to the Notice of Proposed Second Rulemaking under the Debt Collection Licensing Act regulations (PRO 05-21). The CRC supports the regulations issued by the Department of Financial Protection and Innovation. However, as explained in the enclosed comment, we believe the Department can craft regulations that are efficient by removing duplicative requirements and unnecessary burdens with respect to data retention requirements. The regulation will still serve California consumers and allow licensees to comply with the reasonable regulations.

Sincerely,
Missy Meggison
Missy Meggison
Executive Director, Consumer Relations Consortium

COMMENT TO NOTICE OF PROPOSED RULEMAKING

Overlapping License Requirements for Debt Collectors and Debt Buyers

The California Financing Law ("CFL") requires the licensing and regulation of finance lenders and brokers who make and broker both consumer and commercial loans; prohibits misrepresentations, fraudulent and deceptive acts in connection with the making and brokering of loans; and provides administrative, civil, and criminal remedies for violations of the law. Fin. Code, § 22000 *et seq.*

In 2020, the California legislature passed SB 908, the Debt Collection Licensing Act ("DCLA"), which provides for the licensure, regulation, and oversight of California debt collectors by the Department of Financial Protection and Innovation ("DFPI" or "Department"). Thus, the DFPI now provides licensure, regulation, and oversight of California debt collection practices under both the CFL and DCLA.

Under this dual framework, there may be instances where debt collectors, under California law, will be required to maintain licenses under both the CFL and the DCLA. This is true even for companies for whom debt collection is not their primary business because the CFL's definition of "broker" includes any person engaged in the business of negotiating or performing any act as a broker in connection with loans made by a finance lender. This definition could be interpreted to include debt collectors or debt buyers who are also subject to the DCLA.

Duplicative licensing requirements place unnecessary burdens and expenses on debt collectors and debt buyers. For this reason, the CRC recommends that entities maintaining a CFL license be exempt from also obtaining a DCLA license for any part of their business. This can be achieved by simply expanding the definition the CFL's scope of authority for licensee oversight (Fin. Code, § 22007) to include debt collection activities of CFL licensees across all areas of operations, even those involving activities for which the CFL license would not otherwise be required. For example, this could include the servicing and collections of California debtor accounts that were not originated, brokered, or purchased by the licensee. This revision would resolve the unnecessarily duplicative licensing paradigm by simply incorporating the provisions of the DCLA into the CFL license.

Proposed Section 1850(o) defining "Net Proceeds Generated by California Debt Accounts"

CRC believes that the proposed definition of "net proceeds generated by California Debt Accounts" should factor in the costs of the licensee's services rendered, not just "goods

provided." Proposed § 1850(o) of the Proposed Rule defines "net proceeds generated by California debtor accounts" as follows:

> For purposes of subdivision (a) of Financial Code § 100020, "net proceeds generated by California debtor accounts" shall mean the revenue less costs of goods sold or "gross income" generated by California debtor accounts.
>
>> (1) For purposes of this section, revenues generated by California debtor accounts means any income generated from collection activity for California debtor accounts, including but not limited to fees for services related to the collection of California debt accounts, income received from the payment by a debtor, and income received from buying and selling California debtor accounts.
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>> (2) For purposes of this section, costs of goods sold for the collection of California debtor accounts includes expenses directly attributable to the debt being collected, including the cost of the debt. The costs of goods sold does not include operational costs that are not directly attributable to the expenses for the collection of California debtor accounts.

CRC encourages DFPI to revise proposed § 1850(o)(2) as follows to clarify that "goods sold" include "services rendered" for California debtor accounts:

>> For purposes of this section, costs of goods sold for the collection of California debtor accounts includes expenses directly attributable to the debt being collected, including *the cost of services rendered, and* the cost of the debt. The costs of goods sold does not include operational costs that are not directly attributable to the expenses for the collection of California debtor accounts.

Incorporating services rendered into § 1850(o)(2) will more accurately reflect the variety of services that debt collectors provide to their clients, the cost of said services, and the appropriate calculation of "net proceeds" for purposes of Fin. Code, § 100020.

Proposed § 1850.71 – Record Retention Requirements are Onerous, Costly, and Duplicative for the Licensee

Introduction

Section 1850.71 of the DFPI Proposed Rules would require each licensee to maintain and preserve a significant amount of information with respect to the contact and communications

made with California consumers. The Proposed Rules also seek to require licensees to provide (1) information that an account has been settled as well as instances where the consumer was informed that no further collection activity will be made, (2) all employee records, (3) all financial information with respect to each consumer account, and (4) records with respect to consumer complaints and responses in compliance with regulations adopted to Division 24 of the Finance Code.[1] Licensees would be required to maintain and preserve these records for a period of seven (7) years following the latest of one of the following three (3) occurrences:

1) The debtor's account was settled, paid in full, or the consumer was notified that no other collection activity would occur by the licensee;

2) The account was returned to the creditor regardless of whether payment was made; or

3) The account was sold, or all collection attempts have ceased.

Not only is the level of detail significant but a requirement of a licensee to retain records for 7 years, surpasses anything required under federal law and most state laws. Furthermore, the proposed regulations under the California Consumer Financial Protection Law (CCFPL) only imposes a 5-year retention period for complaints. Additionally, the DFPI recently proposed specific requirements for complaints which appear to be duplicative of the record retention requirements outlined in this Proposed Rule.

Proposed § 1850.71 – Document Retention

CRC does not oppose a document retention requirement for licensees. The concern here is the level of detail and the length of time that a licensee is required to retain records.

Time Period for Retention

To require a licensee to retain records for a period of 7 years upon payment or closure of file is simply not reasonable. Further the costs that it would impose upon a licensee far exceeds any measurable benefit to the consumer.

The recent debt collection rules implemented by Regulation F, 12 C.F.R. § 1006.1 *et seq*., imposes only a three (3) year retention period. To the extent a state requires a debt collector to retain records, the majority of those states fall within the federal retention period of 3 years. While there are states that impose a longer period of five (5) or six (6) years, no other state imposes a 7-year period retention period.

Furthermore, the proposed regulations for the retention of consumer complaints and inquiries under the CCFPL is only 5 years. Requiring licensees to retain one set of records for 5 years and

[1] See, Notice of Proposed Rulemaking under the California Consumer Financial Protection Law (CCFPL): Consumer Complaints and Inquiries (PRO-03-21), May 20, 2022. As of the date of this comment, these proposed regulations have not been finalized and there has been no date set for implementation.

then requiring the retention of a different set of records for 7 years is not efficient or logical. It creates sufficient confusion about which set of regulations a licensee must follow and risks inadvertent noncompliance generated from such confusion. CRC proposes that § 1850.71(c)(6) be eliminated to remove this confusion.

No other state seeks the amount of data and information that is proposed here. Not only will licensees, in many instances, need to reconfigure their internal CRMs to capture the data required under these regulations, the information will need to be stored and maintained. Thus, licensees will need to expend thousands of dollars each year for a 7-year period to ensure the data is secure and properly retained. Maintaining this information for 7 years, well after an account has been resolved, only results in needlessly putting consumers' information at risk. The longer data is stored the potential that the data will be compromised or breached will only increase. Every year hackers are getting more and more creative, sophisticated, and unscrupulous. No entity, not even the United States government is immune.[2] California consumers are not well served by requiring licensees to maintain data for a 7-year period.

CRC proposes that that retention period for debt collection activity of 3 years is appropriate and aligns with Regulation F and the majority of states. This length of time ensures that consumer information with respect to debt collection activity remains protected without compromising DFPI's ability to adequately oversee a licensee's debt collection activities. If DFPI thinks a longer period of time is warranted, then the maximum amount of time should be no longer than 5 years to align with the proposed regulations for complaints and inquiries under the CCFPL.

Records

The proposed regulations also require specific account information to be retained from placement to closure. While most licensees have the ability to collect this information, the exact data points proposed may not be something every licensee captures or captures in the format as suggested in the regulations. There is no standardized platform that is used by every licensee. The data files that will contain this information will be voluminous, especially with respect to collection notes and account histories. Furthermore, proposed § 1850.71(a)(4) requires that licensees maintain evidence of whether the attempt to contact the consumer resulted in a "direct or indirect" communication; but there is no definition of an "indirect communication." Therefore it would be impossible for licensees to know what information should be retained. While it is presumed that an "indirect communication" could be a communication such as a message left on a voicemail or with a third person, the regulations should define or further clarify this term in order to ensure that a licensee is complying. An example of such confusion is the fact that under Regulation F, a particular type of voicemail message called a "limited content message", *see* 12 C.F.R. § 1006.2(j) does not qualify as a "communication." Does this mean that it qualifies as an "indirect communication"? Or since it doesn't meet the definition of a "communication" such messages do not have to be retained at all? Unless a definition is provided, CRC believes that the

[2] https://www.cnn.com/2020/12/13/politics/us-agencies-investigating-hacking-data-breach/index.html

requirement of retaining information about indirect communications should be stricken from the proposed rules.

Finally, § 1850.71(a)(5) would require licensees to provide a summary of the contact or message conveyed and whether that communication results in a payment. Payments are not always made simultaneously with a communication. Furthermore, the proposed regulation suggests that the licensee would be required, in some instances, to analyze which payments correspond to which communication. Sometimes payments are the result of multiple communications and trying to pinpoint the exact communication that finally tipped the scales that led to the payment is, at best, unduly burdensome and, at worse, impossible. Such an analysis seems unnecessary. A licensee's collection notes which details the conversation with a consumer along with a payment history should be more than efficient to show the nature of the communication and the payments made by the consumer.