March 8, 2021

RE: FILE NO: PRO 01-21

Department of Financial Protection and Innovation, Legal Division
Charles Carriere, Senior Counsel for the Commissioner
300 S. Spring Street, Suite 15513
Los Angeles, CA 90013

Submitted via email

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 participate in this process that is so important to all debt collection stakeholders, and to comment on these issues vital to California consumers.

Sincerely,

Stephanie Eidelman
Executive Director, Consumer Relations Consortium

1. Definitions

Question 1(A): Financial Code Section 90005 establishes definitions that apply to the CCFPL. Are additional definitions needed? For the terms already defined, are any of the definitions unclear, and, if so, why? Does any definition result in ambiguity regarding whether an individual or entity, or product or service, falls within the scope of the CCFPL?

DEFINING DEBT AND DEBT COLLECTION

Comment: Section 90005 establishes various definitions which in some places appear to overlap or are otherwise ambiguous. For instance, the term "consumer" can mean virtually any individual, not necessarily an individual engaged in the use of a "consumer financial product." "Debt collection" is also not defined, but "debt collection activity" is defined. This approach is incongruent with the Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act which contain well developed definitions for these activities. CRC recommends that DFPI clarify in its regulations that debt collection activity should only apply to the collection of debts that were "incurred primarily for personal, family or household purposes." Without clear definitions, all debt collection activity, including commercial debt collection activity could be swept into the CCFPL contrary to its stated intent "to strengthen consumer protections…" Cal. Fin. Code § 9000(a)(4).

The lack of a definition of "debt collection" in the CCFPL, despite "debt collection activity" being defined as coming within its purview, results in a conflict with the definition of "debt collection" found in the Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), Cal. Civ. Code § 1788.2(b), which defines debt collection as the collection of consumer debts. This inconsistency could lead to a lack of clarity for both providers of consumer financial products and services as well as CRC members who are primarily debt collectors.

CRC recommends that the DFPI work to issue regulations that would harmonize and clarify these various and conflicting definitions. As written, it is unclear whether all "consumer credit transactions" (as defined by the RFDCPA at § 1788.2(e)) and "consumer debt" or "consumer credit" (as defined by RFDCPA § 1788.2(f)) are also subject to the CCFPL.

Additionally, the regulations should clarify what types of debts would qualify under the CCFPL. For example, it is unclear, based upon the definitions of a financial product or service, whether medical debt is subject to the CCFPL. The CRC urges clarity on this issue.

CRC recommends that regulations for the CCFPL promote certainty and clarity by adopting (by reference) the preexisting definitions of "debt collection", "debt collector" and "debt" from the RFDCPA to provide consistency and clarity.

DEFINING COMPLAINTS, DISPUTES OR INQUIRIES

CRC further recommends that DFPI specifically define the terms “complaint”, “dispute” and “inquiry” to ensure that covered entities can investigate and respond to consumer communications in ways that best serve consumer needs and promote the purposes of the CCFPL. CRC suggests the following specific definitions:

A “complaint” is an expression of dissatisfaction with the financial product or service offered or provided by a covered entity. The consumer’s complaint must be submitted to an address specified by the covered entity for such complaints, which (1) identifies the specific information or item being complained of, (2) explains the basis for the complaint with particularity, and (3) includes all supporting documentation to substantiate the basis of the complaint.

An “inquiry” is a request for information, interpretation, or clarification about a financial product or service offered or provided by a covered entity.

A "dispute" is a notice provided to a covered entity, at the address specified by the covered entity for such notices, which (1) identifies the specific information or item being disputed, (2) explains the basis for the dispute, and (3) includes all supporting documentation required by the covered entity to substantiate the basis of the dispute.

(This definition of “dispute” harmonizes the CCFPL with the Fair Credit Reporting Act, 15 U.S.C. §1681s-2(a)(8)(D) and creates clarity for consumers who communicate their objections to covered entities.).

Certain and clarity in the definitions of these terms helps consumers and promote the purposes of the CCFPL. CRC encourages DFPI to define these terms so consumers can clearly understand how to articulate their communications with covered entities, including debt collectors, so their needs can be properly met.

QUESTION 1(B): Financial Code Section 90005, subdivision (k)(12), permits the DFPI to define additional financial products or services subject to the CCFPL by regulation, subject to certain limitations under that section. Are there additional financial products or services that the DFPI should, by regulation, bring within the scope of the CCFPL? If so, please describe.

Comment: As noted above, if it is the intention of DFPI to include all types of consumer debt within the CCFPL, then debt must be clearly defined so as to include consumer debts like medical debt. CRC also recommends that activities by credit report organizations and debt settlement companies be included under the definition of financial product or service.

3. Registration Requirements

Question 3(A): For what industries should the DFPI first establish registration requirements under Financial Code section 90009, subdivision (a)? What consumer protection risks do those industries present to consumers that would make it appropriate to prioritize the registration of those industries over others? The DFPI invites stakeholders to submit examples of acts or practices in those industries that stakeholders find concerning.

Question 3(A): For each industry that a stakeholder states should be a priority for registration, what rules should the DFPI establish to facilitate oversight of the industry, what records should the DFPI require those registrants to maintain, and what requirements should the DFPI impose to ensure that covered persons are legitimate? (Fin. Code § 90009, subd. (b).) What data should the DFPI require registrants to submit in annual or special reports to the DFPI? (Fin. Code § 90009, subd. (f)(2).) Why should the DFPI collect this data?

Comment for Both Questions: If the DFPI determines that registration would be required for non-depository institutions like debt collectors and debt buyers, CRC encourages DFPI implement a process that is clear, transparent and not otherwise onerous upon licensees. CRC proposes the following core principles and elements:

- License requirements should be restricted to 3rd party debt collectors only. First party servicers and creditors are already regulated, whether it be through a state lending license or other federal requirements.
- Clear requirements with respect to whether passive debt buyers are required to be licensed.
- The licensing process should be incorporated through the NMLS system, which DFPI already uses for California Lender Licensing, Mortgage Service Licensing and Student Loan Servicing Licensing. Currently 10 states that require a collection agency licensee to use the NMLS system
- Requirements for licensing should be consistent with other state licensing requirements, including annual financials, reasonable bonding requirements and yearly financial submissions. CRC discourages DFPI from requiring branch office licensing and manager licensing which is duplicative, unnecessary, and does not advance the DFPI's goal of protecting consumers.

4. Complaint Handling

Question 4(A): What reasonable procedures should the DFPI establish to ensure that businesses provide timely responses to consumer complaints and inquiries? Should the procedures vary based upon whether the consumer submits the complaint or inquiry directly to the business or to the DFPI? If so, how should the procedures vary?

Comment: Section 90008(a) establishes rules for licensees to respond to complaints/inquiries received directly from consumers. Section 90008(b) establishes rules for licensees to respond to complaints/inquiries received from DFPI. Regardless of the source of a consumer complaint, CRC encourages DFPI to implement identical licensee response procedures.

The statute currently requires that licensees "provide a timely response" and the same should apply whether the consumer is making the complaint directly to the licensee or if the complaint is received from DFPI. Although the statute states that responses to complaints should be "in writing where appropriate," CRC supports a requirement that all complaints from consumers be in writing to a licensee in order to ensure that an accurate record is maintained of consumer communications.

CRC also recommends that DFPI establish a procedure to require consumers to engage in good faith efforts to resolve disputes directly with the licensee before submitting their disputes to DFPI. Opportunities to resolve disputes, or right to cure, are already embedded in the RFDPA[1] and having two standards may be confusing not only for the consumer but for debt collectors as well. A requirement that the consumer attempt to resolve the disputes before submission to DFPI would be similar to the complaint requirements of the Better Business Bureau as well as requirements under West Virginia law,[2] which provides that before a consumer can seek legal remedies under the West Virginia law, a written notice of the violation of the law must be provided to the entity. Having this type of pre-dispute procedure will result in consumers getting their disputed issues resolved more quickly while at the same time making the entity aware of possible deficiencies in their processes.

---

[1] [A] debt collector shall have no civil liability under this title if, within 15 days either after discovering a violation which is able to be cured, or after the receipt of a written notice of such violation, the debt collector notifies the debtor of the violation, and makes whatever adjustments or corrections are necessary to cure the violation with respect to the debtor." Cal. Civil Code § 1788.30(d).

[2] W. Va. Code, §46A-6-106. Private causes of action. (c) Notwithstanding the provisions of subsections (a) and (b) of this section, no action, counterclaim, cross-claim or third-party claim may be brought pursuant to the provisions of this section until the person has informed the seller or lessor in writing and by certified mail, return receipt requested, of the alleged violation and provided the seller or lessor twenty days from receipt of the notice of violation but ten days in the case a cause of action has already been filed to make a cure offer: Provided, That the person shall have ten days from receipt of the cure offer to accept the cure offer or it is deemed refused and withdrawn.
(d) If a cure offer is accepted, the seller or lessor has ten days to begin effectuating the agreed upon cure and the cure must be completed within a reasonable time.
(e) Any applicable statute of limitations is tolled for the twenty-day period set forth in subsection (c) of this section or for the period the effectuation of the cure offer is being performed, whichever is longer.
(f) Nothing in this section prevents a person that has accepted a cure offer from bringing a civil action against a seller or lessor for failing to timely effect the cure offer.

CRC also recommends using the CFPB's pre-existing complaint portal rather than creating yet another portal for consumers to navigate.

QUESTION 4(B): With respect to the timeliness of complaint and inquiry responses, what timelines should the DFPI establish for businesses? Should the timelines vary based upon the type of business or product to which the complaint or inquiry relates?

Comments: CRC recommends allowing licensees 30 days to investigate and respond to a consumer's complaint/inquiry, no matter the source of the complaint. This time frame is similar to response requirements of the CFPB complaint portal and responses to FCRA disputes. If the responsive information is archived or must be requested from an external source, the licensee should be able to respond within 30 days and be allowed an additional 90 days to reply or advise the consumer that the account is being closed.

QUESTION 4(C): With respect to the substance of complaint or inquiry responses, what requirements should the DFPI establish to ensure that responses demonstrate that the business has undertaken a reasonable investigation in response to the complaint or inquiry and that the business has taken steps to address any errors or mistakes discovered during that investigation?

Comments: In order for dispute resolution to be effective, the consumer must be able to clearly articulate its dispute. For example, in order to qualify as a dispute, the consumer must sufficiently identify who is the proper consumer, identify the accounts/product/service they are disputing/complaining about and specifically describe the nature of their dispute. A debt collector or creditor is unable to do a reasonable investigation unless they have at least a minimal understanding about the consumer's concern. CRC encourages the DFPI to provide a list of available dispute options that the consumer may select to identify their dispute as well as additional free-form fields so that a consumer can fully explain their issue. CRC envisions a similar drop-down menu that the CFPB currently utilizes on its complaint portal. Only when a consumer can articulate its dispute, should a debt collector or a creditor be required to conduct reasonable investigation. The reasonable investigation should be tied directly to the dispute and if meets the definition as proposed.

QUESTION 4(D): Should the DFPI require businesses to establish a specific mailing address, email address, or internet portal by which California consumers can submit inquiries or complaints that are subject to the procedures the DFPI establishes?

Comments: Yes, CRC recommends requiring licensees to designate a mailing address, email address, or web portal (if available) for consumers to submit disputes. If the consumer submits the dispute some other way, the licensee should not be liable for failure to respond if they do not receive it. If the licensee receives the incorrectly-submitted dispute, it may respond in accordance with the rules or send the consumer written notice explaining how to submit a dispute through the designated channel (similar to New York substantiation).

QUESTION 4(E): Should the DFPI interpret or clarify through regulation any provisions of Financial Code section 90008 concerning complaints? For example, Financial Code section 90008, subdivision (d)(2)(D), provides that a business need not disclose "nonpublic or confidential information, including confidential supervisory information" in response to a consumer complaint or inquiry. Is rulemaking necessary to clarify what constitutes "nonpublic or confidential information"?

Comments: Yes, see comments above.

5. UNLAWFUL, UNFAIR, DECEPTIVE AND ABUSIVE ACTS AND PRACTICES (CONSUMER)

QUESTION 5(A): Are there specific acts or practices in the market for consumer financial products or services that stakeholders believe are unlawful, unfair, deceptive, or abusive? If so, please describe the act or practice (with specific examples, if possible) and explain why the act or practice is unlawful, unfair, deceptive, or abusive. Should the DFPI identify the act or practice as unlawful, unfair, deceptive, or abusive through regulation? (Fin. Code § 90009, subd. (c).) If so, describe the harm the act or practice causes consumers, the frequency of the act or practice (if known), and any other relevant information concerning the cause or potential causes of the act or practice. Please also describe what requirements the DFPI should adopt to prevent the act or practice.

Comments: The DFPI should consider enacting specific regulation governing for-profit debt settlement and credit repair organizations ("debt relief companies"). Debt relief companies are largely unregulated and operate outside of traditional regulatory frameworks. The risks and harm that can be caused by for-profit debt relief companies could be mitigated through reasonable regulations.

Specifically, the DFPI should consider requiring debt relief companies to register and be licensed to operate in the State. There should be regulations setting out limitations on fees that can be charged to consumers for such services. In addition, debt relief companies should be required to disclose their services, fees, and the availability of other free avenues for resolving debt to consumers. The DFPI should also enact an express provision permitting third-party collection entities to include information to consumers warning them of the risks associated with debt relief companies and providing the names and hyperlinks to free resources for debt resolution, including the identity of available nonprofit services and the CFPB's website.

8. Disclosures

Question 8(A): Should the DFPI prescribe rules to ensure that the features of a consumer financial product or service are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service? (Fin. Code §90009, sudb. (d).) If so, please describe the product or service where consumers would benefit from disclosure rules, what disclosures the DFPI should require, and why those disclosures will help consumers understand the costs, benefits, and the risks associated with the product or service.

Comments:

The DFPI Should Avoid Premature Adoption Of Consumer Disclosure Requirements

The CRC supports the premise of Cal. Fin. Code. §90009(d) that consumers deserve full, accurate, and effective disclosures about the consumer financial products and services they consume. Most existing disclosure requirements today fulfill this goal. CRC believes that, at this time, new disclosure requirements are not necessary and would be premature without further market research and study by the DFPI. Should the DFPI identify market failures due to imperfect information, then, and only then, should the DFPI consider additional disclosures to correct those identified market failures. The CRC submits that disclosure requirements imposed on the market absent adequate market research would be premature.

The current regulatory landscape governing the financial services industry is replete with consumer disclosure requirements, including the new disclosure requirements for debt collectors contained in Regulation F, 12 CFR part 1006, which implements the Fair Debt Collection Practices Act and currently become effective on November 30, 2021. In addition to numerous state law disclosure requirements imposed on service providers throughout the country, numerous other federal laws also impose disclosure requirements which fulfill the goal articulated in Cal. Fin. Code. §90009(d), including the Truth in Lending Act, the Fair Credit Reporting Act, the Electronic Funds Transfer Act, the Alternate Mortgage Transaction Parity Act, the Consumer Leasing Act, the Equal Credit Opportunity Act, the Fair Credit Billing Act, the Homeowners Equity Protection Act, the FDIC Act, the Home Mortgage Disclosure Act, the Real Estate Settlement Procedures Act, the Truth in Savings Act, and the S.A.F.E. Mortgage Licensing Act of 2008, to name just a few.

The CRC urges the DFPI to proceed cautiously, deliberately, and with the benefit of empirical evidence supporting the conclusion that an additional disclosure is needed to more completely meet the needs of consumers. Disclosure requirement obligations lacking supporting evidence would be premature.

The DFPI Should Carefully Consider Disclosure Content

Words matter. The process for choosing the right words to include in mandatory disclosures should be outsourced to experts in the field of consumer surveys and behavioral studies. Representative consumer focus groups should be employed to measure consumer response to proposed disclosure language. CRC recommends that DFPI delay consideration of any disclosure language until it first completes a thorough and deliberate study on how consumers comprehend and respond to new disclosure language.

The DFPI Should Carefully Consider Existing Disclosure Requirements And Avoid Conflicts

The consumer financial services industry currently provides numerous disclosures to consumers explaining the costs, benefits, and risks associated with financial products and services. Many of these disclosures are required by state and federal law throughout the country. Before implementing any disclosure requirements pursuant to Cal. Fin. Code. §90009(d), the DFPI should canvas existing state and federal laws requiring service providers to provide consumer disclosures. This research will enable the DFPI to avoid duplicating disclosure obligations already in place to meet consumer needs. The research will also help the DFPI avoid creating legal disclosure obligations under Cal. Fin. Code §90009(d) which conflict with preexisting state and federal laws designed to achieve the same purposes.

The DFPI Should Not Require Any Disclosure Without Also Measuring Its Efficacy

Consumers are inundated with disclosures throughout the financial services marketplace. Despite the good intentions of lawmakers and regulators to fix market failures resulting from imperfect information, the effectiveness of "one more disclosure" often goes unmeasured. Before implementing disclosure requirements pursuant to Cal. Fin. Code. §90009(d), the CRC believes the DFPI should carefully consider and measure the effectiveness of the accumulated impact of adding an additional disclosure to an already full array of disclosures aimed at consumers.

The CRC posits that the marginal benefit of an additional consumer disclosure describing the costs, benefits, and risks associated with a financial product service *decreases* as the number of required disclosures increases. At some point, that marginal benefit becomes zero because the cumulative volume of disclosures provided to consumers causes their behavior to change – they stop reading disclosures altogether. When consumers stop reading disclosures, the value and effectiveness of *any* additional disclosure is reduced to nearly zero. When consumers stop reading disclosure, *all* disclosures lose value.

The CRC recommends that the DFPI retain third party experts to perform representative consumer focus group studies to measure consumer response to the *accumulated volume* of required disclosures a consumer receives in connection with a particular transaction before imposing additional disclosure requirements in the marketplace. The CRC posits that adding additional mandatory consumer disclosures could potentially have a negative impact on the well-intended goals of Cal. Fin. Code. §90009(d) to give consumers better understanding of the products and services they consume. Instead of informing consumers who read disclosures to make better informed decisions about consumer financial products and services, additional mandatory disclosure may discourage consumers from ready *any* mandatory disclosures because the burden of reviewing and comprehending the total volume of disclosures exceeds the average consumer's willingness to become informed about the product or service they desire. More is not always better. The DFPI should carefully measure the marginal benefit (or cost) associated with additional mandatory disclosures before imposing them on consumers or the marketplace.