



May 2, 2023

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 Fair Credit Council (“AFCC”), the leading trade association representing the debt resolution industry, we appreciate the opportunity to submit comments in response to the proposal by the Department of Financial Protection and Innovation (“the DFPI” or “the Department”) to adopt regulations implementing the California Consumer Financial Protection Law. As an organization that represents an industry whose members are committed to helping financially challenged consumers regain their financial wellbeing, the AFCC welcomes the Department’s proposal to implement a registration regime for debt resolution providers in California.

Having previously submitted comments to the Department in response to its initial proposed registration rulemaking in late 2021, we will limit our comments to the DFPI’s most recent rule proposal to two important areas: (1) ensuring alignment between the existing statutory definitions and those found in the proposed registration requirements; and (2) the importance of a more holistic view of consumer outcomes across a wider range of products.

Applicability of the Debt Resolution Registration Regime

As currently proposed, and in contrast to legislative intent, the Department’s proposal would require a broad set of market participants that do not actually provide debt resolution services to register with DFPI. To avoid this unintended outcome, the AFCC respectfully requests that the Department align its debt resolution registration requirements with the statutory definition of “debt settlement services” as previously enacted by the California Legislature.

California currently has a robust law governing the debt resolution industry.¹ This legislation was enacted following a multi-year negotiation among members of the legislature, the debt resolution

¹ Fair Debt Settlement Practices, Cal Assembly Bill 1405 (Wicks, 2021), Chapter 454.



industry, consumer advocacy organizations and other stakeholders. That law defines “debt settlement services” as follows (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.*
- (2) Advising, encouraging, or counseling a consumer to accumulate funds in an account for future payment of a reduced amount of debt to one or more of the consumer’s creditors.²*

The statutory definition of “debt settlement services” applies to persons who actually offer to act as debt resolution providers. By contrast, the Department’s proposed rules would apply to persons “offering or providing” debt settlement services to California residents. As drafted, this definition would require the registration of large universe of marketing firms notwithstanding that those firms do not actually offer to act, or actually act, as debt resolution services providers. Such an outcome would certainly create consumer confusion. Moreover, since Section 1021(15)(C) of the Department’s proposed regulations already 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. To better align DFPI’s proposed registration requirements with the existing statutory definitions, the AFCC encourages the Department to amend Section 1010 of its proposal to remove the words “offering or” from subsection (a).

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

As we suggested in our initial comment in response to the Department’s 2021 proposals, the DFPI’s proposed rules articulate a series of annual reporting requirements for registrants who offer or provide debt resolution services to California consumers. These reporting requirements, which include the total number of consumers a registrant has enrolled in a debt resolution program, the average number and total amount of debts enrolled, and the average and total amount of fees per program participant paid over the term of their contract with the registrant, will provide the DFPI with a holistic view of the significant value debt resolution service providers deliver to tens of

² Cal. Civ. Code § 1788.301(b).



thousands of Californians each year. We anticipate that the data collected by the Department will corroborate, as independent academics have concluded³, 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;
- Debt resolution service providers provide Californians 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 savings, inclusive of fees.

While we continue to support providing DFPI with data each year that demonstrates the value to California consumers of our members' services, we would also once again respectfully request that the Department exercise its authority to collect similar data from providers of other products and services that may be available to Californians in financial hardship to address their unmanageable debt burdens. A comparison of consumer outcomes from debt resolution programs with consumer outcomes from credit counseling, bankruptcy, credit loan modifications, and short-term consumer loans would enable DFPI to monitor comparative performance outcomes across the different options that might be available to consumers in financial hardship. A side-by-side comparison of the risks and benefits, as well as the costs and burdens, of these products and services would provide essential context to an understanding of consumer outcomes from all available options, not just debt resolution. The AFCC therefore once again respectfully suggests that the Department consider collecting similar data annually from providers of other services, not just from debt resolution firms.

³ Regan, G. *Options for Consumers in Crisis: An Economic Analysis of the Debt Settlement Industry, California Edition 2021*. Heming Morse, LLP. Retrieved from <https://americanfaircreditcouncil.org/wp-content/uploads/AFCC-2020-California-Data.pdf>.



Thank you for considering the AFCC's perspectives. We continue to look forward to working alongside you 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 AFCC 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,

A handwritten signature in blue ink that reads "Denise Dunkel". The signature is written in a cursive style.

Denise Dunkel
Chief Executive Officer

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