Araceli Dyson
Department of Financial Protection and Innovation
2101 Arena Boulevard
Sacramento, California 95834
Via email to: regulations@dfpi.ca.gov

RE: CCFPL, CFL, CDDTL, and SLSA – Registration Requirements under the CCFPL - PRO 01-21

Dear Ms. Dyson,

The California Low-Income Consumer Coalition (CLICC) and the National Consumer Law Center (NCLC) (on behalf of its low-income clients) write in response to the Department of Financial Protection and Innovation's (DFPI) request for comment related to the registration requirements under the California Consumer Financial Protection Law (CCFPL).

CLICC is a statewide coalition of more than a dozen providers of free legal services. The organizations came together in 2017 to pool their resources, experience, and expertise and establish a permanent presence for low-income consumer advocacy in Sacramento. CLICC and its members work to build a marketplace in which consumer rights and economic justice are fully recognized and firmly established.

NCLC is a nonprofit organization that engages in research, education, advocacy, and litigation to advance economic justice for low-income and other disadvantaged people, including people of color and older adults. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, federal and state governments, and courts across the nation to protect low-income people from harmful lending and debt collection practices, help financially stressed families build and retain wealth, and advance economic fairness.

CLICC and NCLC welcome the proposed regulations under the CCFPL to protect low-income and vulnerable students, employees, and consumers from predatory lending, debt settlement, and income-based advance practices. This comment will focus specifically on the regulations as they pertain to debt settlement.

Two years ago, CLICC recommended the DFPI regulate Check Sellers, Bill Payers, and Proraters (Debt Settlement Companies) under Section 9009(a). As these "debt settlement"

companies are a substantial source of fraud, CLICC and NCLC support the DFPI inclusion of Debt Settlement Services in the new proposed regulations.

The very model of debt settlement causes the consumer to incur the longest-lasting harms at the outset of the program—consumers are told to stop paying on their debts, on which they are often current, to force the debt into charge-off in order to bring creditors and debt collectors into negotiations. The default and resulting delinquencies result in drops in credit ratings which can last up to 7 years and impact the consumer's ability to qualify for housing and employment, not to mention the impact of lawsuits from those creditors. Debt settlement is too often a slow bleed that can leave the consumer worse off overall than if they were to file bankruptcy.

A sense of responsibility for debts leads many vulnerable clients to seek alternatives to bankruptcy when facing untenable debt burdens. This leads them to seek out alternatives, including Debt Settlement Companies, whose practices can lead to prolonged harm for the consumer in distress and no actual results.

For example, our clients often pay settlement fees calculated as a percentage of the enrolled debt rather than the amount saved by the settlement. This creates a perverse incentive for Debt Settlement Companies to "settle" debts for an amount that, when combined with the fees, could result in a net loss for the consumer. We have seen debt settlement fees average around 25%, as a result, any benefit to our clients from a settlement is often minimized because the fees divert most of the benefit to the Debt Settlement Company rather than the vulnerable consumer.

In one instance a client had a Debt Settlement Company set up a high interest loan, with another entity, whose affiliation was unclear, that was paid out to the Debt Settlement Company. This scheme allowed the Debt Settlement Company to "settle" the client's debt and take their fees from the loan money quickly, while the client was stuck paying off the loan over the long term, essentially trading one debt for another and paying to use the money twice (once to the lender in interest and a second time to the Debt Settlement Company in fees). For this client, the interest rate on the loan was over 20% and they charged a $500 loan origination fee on top of that. The Debt Settlement Company charged a fee for settlement (25% of the enrolled debt). After advancing the loan, the Debt Settlement Company immediately settled a $10k debt for $9k. The total cost to the consumer for settling that $10k debt was $11.5k not counting interest on the loan. While this was before Cal. Civil Code 1812.300 et seq. went into effect and section 1812.302(c)(1) should prevent this practice going forward, it still shows the excessive fees and creative methods Debt Settlement Companies use to extract any benefit of debt settlement from consumers.

Additionally, with the current recession caused by the pandemic, concern about Debt Settlement Companies targeting moderate-income households facing temporary financial crisis is serious and growing. These consumers have arguably more to lose than even our low-income and elderly clients.

We commend the DFPI's plan to implement a data collection protocol for the debt settlement industry to determine (among other things) what percentage of people who sign up for debt settlement receive any overall financial benefit from the program, much less the financial

benefits they were promised. But, as explained below, we recommend several improvements to the protocol to ensure that it meets the DFPI's goals.

SPECIFIC RECOMMENDATIONS

§ 1001. Definitions – Debt Settlement Services:

The definitions for debt settlement services should be modified to appropriately capture all charges and providers, while removing ambiguity.

The definition of "charges" should clarify that all amounts received by payment processors are included, which it already does for amounts received by a person providing debt settlement services. This will create consistency in the definition of "charges" and more accurately capture the full scope of charges paid by consumers. Section 1001(a) should be amended to add "all" as shown below:

> *§1001(a)*
> *"Charges" mean all amounts contracted for or received by a person in connection with the person's provision of debt settlement services to a consumer, and **all** amounts contracted for or received by payment processors in connection with a person's provision of debt settlement services.*

The definition of "debt settlement services" should remove limiting language regarding purpose so it is unambiguous and limits opportunities to confuse consumers. Language around "primary purpose" is ambiguous and may make it unclear to companies if they should register, as they may participate in various consumer debt services and may define "primary purpose" differently. Additionally, many consumers may not understand what it means if they sign a contract stating a different "primary purpose" than the one that led them to seek out debt settlement services. CLICC members have seen Debt Settlement Companies charge high fees on services related to, but not exactly, debt settlement. These services would not be captured if the "primary purpose" language remains. For the consumer, the primary purpose was debt settlement. The company, however, could use the "primary purpose" language to their advantage by charging their fees for related services, even if debt settlement services are included, so that they can state that the "primary purpose" was not debt settlement. Removing the "primary purpose" language is the only way to ensure that Debt Settlement Companies do not utilize it as a loophole to undermine the DFPI's regulatory objectives. Section 1001(b)(1) should remove "primary" from the definition as shown below:

> *§1001(b)(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 in connection with a consumer's non-mortgage debt, if a ~~the primary~~ purpose of that advice or action is to obtain a settlement for less than the full amount of the debt, or a reduction in the interest rate or payment amount associated with a consumer's debts; or*

The definition of "payment processing services" should be clarified and expanded to ensure it captures interest paid by consumers to lenders who "facilitate" the use of funds by Debt Settlement Companies. Section 1001(d) should add the clarifying language "including but not limited to providing loans to consumers" as shown below:

> *§1001(d)*
> *"Payment processing services" means accepting, maintaining, holding, or distributing funds, or facilitating the acceptance, maintenance, holding, or distribution of funds, on behalf of a consumer for the purpose of facilitating debt settlement services, including but not limited to providing loans to consumers.*

§ 1010. Definitions – Persons Required to Register:

The DFPI should clarify and narrow the provisional authorization for applicants to avoid long periods of activity without oversight.

In Section 1010(c), the DFPI allows applicants to provide their product while their registration is pending. When combined with the long periods for response pending incomplete applications,[1] this section could allow up to 210 days (approximately 7 months) of provisional authorization to provide the subject products. Furthermore, as there is no limitation on the number of unsuccessful applications an applicant can submit, an applicant could provide services on a provisional basis for years by resubmitting applications.

A provisional authorization could harm businesses that are allowed to operate for long periods who would have to cancel leases or pay the cost of shutting down operations if the application is ultimately unsuccessful. It would harm consumers who may receive inconsistent services from applicants who must shut down. Finally, this could result in liability for the agency from businesses who are harmed.

CLICC recommends that the DFPI remove the provisional licensing option altogether. If anticipated delays in processing make this untenable, CLICC recommends that the DFPI limit the number of provisional periods during which an applicant may operate before the applicant must have a successful, approved application. Limitations on conditional periods of operation are within the DFPI's current regulatory structure as the DFPI has implemented limitations on the availability of conditional licenses for debt collectors.[2] The DPFI should update Section 1010(c) to limit provisional licensing as proposed below to ensure the best consumer, agency, and business protections:

> *OPTION 1 (remove): § 1010 (c)*
> ~~*Notwithstanding subdivision (a) of this section, an applicant for registration who has filed Forms MU1 and MU2 and paid all required registration fees before the effective date of these regulations shall be permitted to offer and provide the subject product for which they have sought registration until their application is approved or abandoned.*~~

[1] Section 1021(d).
[2] https://dfpi.ca.gov/debt-collection-licensee.

[OR]

*~~Notwithstanding subdivision (a) of this section,~~ ~~a~~[A]n applicant for registration who has filed Forms MU1 and MU2 and paid all required registration fees before the effective date of these regulations shall **not** be permitted to offer and provide the subject product for which they have sought registration until their application is approved~~.or abandoned~~.*

OPTION 2 (limit): § 1010 (c)

*Notwithstanding subdivision (a) of this section, an applicant for registration who has filed Forms MU1 and MU2 and paid all required registration fees before the effective date of these regulations shall be permitted to offer and provide the subject product for which they have sought registration until their application is approved, or abandoned**, or denied**.* ***The DFPI is not liable for any losses or costs to applicants who elect to provide services pursuant to this provision while their application is pending. If an applicant has more than two (2) denied or abandoned applications in a five (5) year period, then the applicant shall not be permitted to offer or provide the subject product for which they have sought registration until their application is approved.***

§ 1011. Effect of Registration:

The language in this section is important to clarify the limits of registration, namely that registration does not preempt the applicability of other laws or operates as a legal determination of compliance with other laws or regulations. We encourage its inclusion in any final regulation.

§ 1012. Representations Concerning Registration:

We commend the DFPI for the inclusion of deceptive practices under Section (a) and encourage the DFPI to affirmatively require that registrants state that registration is NOT an endorsement.

Section 1012(b) requires providers to "disclose in any advertisement or communication to a consumer that the registrant is registered with" the DFPI. Subsection (a) of that section states that it is a deceptive practice "for a registrant to represent, directly or indirectly, that the registrant's acts, practices, or business have been approved" by the DFPI. Nevertheless, a reasonable consumer may interpret the disclosure required by Section 1012(b) to imply that the business has been approved by the DFPI. To prevent such an interpretation, the Section 1012(b) disclosure should be amended to include the following language:

§ 1012 (b)

A registrant shall disclose in any advertising or communication to a consumer that the registrant is registered with the California Department of Financial Protection and Innovation, which may be abbreviated as "DFPI," under the California

Consumer Financial Protection Law, which may be abbreviated as "CCFPL," and provide the registrant's Department registration number in the advertisement or communication. ***A registrant shall further include in any advertisement or communication to a consumer that "Registration status does not constitute a determination that [Registrant]'s acts, practices, or business model complies with any law or regulation. Consumers should contact the DFPI with any complaints."***

§ 1021. Registration Application:

We emphasize the importance of capturing organizational information to monitor registrants and the products offered. We encourage the inclusion of additional categories and language to capture indirect relationships or products connected to the subject product.

Given the various relationships Debt Settlement Companies can cultivate with different entities, we encourage the inclusion of an additional section to capture non-affiliate and non-subsidiary partnerships, for example with lenders. To ensure a limited burden for applicants we recommend language mirroring Section 1021(a)(11) and limiting it to partnerships related to provision of the subject product. Disclosure of these indirect relationships is important to capture the full scope of entities a consumer engages with to receive the subject product and to help the DFPI staff understand agreements between the registrant and related entities. We recommend adding Section 1021(a)(11) and updating subsequent numbering as shown below:

§1021(a)(11)
(11) ADDITIONAL SUBJECT-PRODUCT-RELATED RELATIONSHIPS: An applicant shall provide information on any entity with which it has a business, financial, and/or referral relationship related to the subject product or its provision on Item Number ### of Form MU1, i.e., the name, address, and the type of institution, and relationship of the institution to the applicant.
(12) *FINANCIAL INSTITUTIONS: [re-numbering would begin here changing this section from (11) to (12)]*

To achieve the DFPI's stated goal for Section 1021(a)(15) of "understanding the basic structure of a registrant's subject products, as well as other products or services being offered to California residents", Subsection (a) should be expanded to included products that are recommended to residents by the registrant, even if they are not administered or otherwise offered by the registrant. This will help capture products offered through partnerships or referrals, that consumers may feel obligated to engage with to receive services. The DFPI will be better positioned to protect consumers and monitor the market if they understand all products presented to a consumer when consumers engage with the registrant and the subject products. We support the inclusion of Section 1021(a)(15)(c) to ensure the DFPI can monitor targeting of vulnerable groups, especially for less favorable subject products. We recommend adding language to capture these products under Subsection (a) as shown below:

§1021(a)(15)

(15) DESCRIPTION OF BUSINESS: An applicant shall file with NMLS a detailed description of the applicant's business activities relating to the offer or provision of subject products in California that includes the following information:

*(A)**(1)** A description of all products or services offered or provided to California residents including, but not limited to, subject products.*

(2) A description of all products or services promoted or recommended to California residents, related to subject products, whether or not offered by the registrant.

Please see above comments regarding Section 1010 and concerns over Section 1021(c)-(f)'s lengthy application period, which includes the proposed language to resolve concerns.

§ 1022. Supplemental Information – General:

While documenting standard digital enrollment processes will assist the DFPI in protecting consumers, the DFPI should go further in its required disclosures to ensure it captures all forms of enrollment procedures.

The DFPI should require submission of any materials used to enroll or process applications over the phone including scripts and internal procedures documentation. This is important because the consumers most likely to apply over the phone are also most likely to be especially vulnerable. For example, low-income consumers with limited technology access, elder consumers and consumers with disabilities that may hamper their ability to use digital mediums, and non-English speaking consumers that need language services. Our recommended additions is below:

§1022(a)

(1) Images documenting the standard enrollment or application process California residents use to request or receive the subject product from the applicant through any mobile applications and websites;

(2) Any materials used to process the standard enrollment or application for California residents over the phone, including but not limited to any phone scripts and internal procedures or processes documentation.

***(3)** [begin renumbering here]*

§ 1023. Supplemental Information – Debt Settlement Services:

The DFPI should require Debt Settlement Companies to provide samples of all communications sent to consumers, including activity or account statements.

As currently written, this section creates a backward incentive for Debt Settlement Companies to decline to provide any statements to consumers to avoid reporting requirements. Rather than

informing the DFPI of how registrants inform consumers, this section would justify registrants avoiding any statements to consumers.

Inasmuch as it is within the DFPI's authority, the DFPI should instead require that registrants provide periodic account or activity statements to consumers, and that applicants provide samples of these statements. These statements should be in hard copy and mailed to consumers. CLICC members worked with consumers who often get locked out of their electronic accounts with Debt Settlement Companies if they miss a payment and lose access to information on whether any debts were settled, where their money went, and if any funds remain.

Furthermore, the DFPI should include in the reporting requirements any statements provided to consumers, not just periodic statements. Registrants may find it unclear whether a statement is "periodic." As such we propose (1) adding additional regulation requiring mailed periodic statements and (2) updated language in the current section to capture disclosures without creating negative incentives below:

> *§1022(a)*
> *If the applicant will offer or provide debt settlement services under the registration, the applicant shall as part of the registration application submit directly to the Commissioner at CCFPLapplications@dfpi.ca.gov* ***copies of all regular communications sent to consumers, including but not limited to required*** *sample periodic account or activity statements , used by the applicant to provide debt settlement services to California residents.* ~~*, if the applicant provides statements to California residents*~~*.*

§ 1030. Confidentiality of Application Materials:

The DFPI should not be overly broad in its application of the California Public Records Act ("CPRA") and should at a minimum allow disclosure of materials the applicants and registrants declare are consumer facing.

While some portions of the application may be confidential, treating the entire application as confidential is an over broad application that undermines enforcement, accountability, and transparency. Often it is complaints from consumers and consumer-based organizations that alert agencies to issues with subject products. If the entire application is confidential then those groups best equipped to report if, for example, application materials or charges to consumers are being misreported are unable to do so. As such we recommend making only those portions of the application that directly contain confidential information subject to nondisclosure under the CPRA:

> *§1030*
> *With respect solely to requests submitted pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) the Commissioner shall treat* ***only those sections of the applications***

containing confidential information *submitted pursuant to Section 1021 of these rules as not subject to disclosure under Government Code section 7929.000, subdivisions (a) and (d).*

§ 1034. Notice of Changes:

We support the inclusion of Section 1034 as it provides a mechanism for the DFPI to continue monitoring changing materials.

The annual reporting focuses more on data collection and Section 1034 is necessary to capture changes in non-quantitative information such as changes to enrollment process and advertising materials.

§ 1041. Annual Reporting – General:

The DFPI should not be overly broad in its application of California Public Records Act to annual reports submitted by subject product registrants.

See above comments under Section 1030 for further information on our position. Below are our recommended changes to increase transparency and accountability:

§1030
(d) With respect solely to requests submitted pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code), the Commissioner shall treat ***only those sections of the reports containing confidential information*** ~~*the reports*~~ *submitted pursuant to subdivision (a) of this section as not subject to disclosure under Government Code section 7929.000, subdivisions (b) and (d).*

§ 1042. Annual Reporting – Debt Settlement Services:

I. Without data on the current dollar value of unsettled debts, the proposed annual reporting requirement for debt settlement will be insufficient to meet DFPI's stated goals.

The DFPI's Initial Statement of Reasons explains that "the information required under this section is necessary to allow the DFPI to assess the consumer benefits, risks, and costs associated with Debt Settlement Companies, which can help inform long-term policy discussions concerning appropriate laws and regulations for the debt settlement industry." We support this goal, but we are concerned that the proposed data submission requirement is inadequate to achieve it.

When assessing debt settlement, the single most important question is whether it causes consumers more harm than good. The most effective way to answer that question is to compare

the total amount of debt enrolled by an individual consumer with the total amount of those debts when the consumer completes or leaves the program. If the consumer's total debt burden is lower, after accounting for associated debt settlement charges, then the debt settlement product may have provided a measurable benefit.[3] But if the value of any savings on settled debts exceeds the cost of accretion on unsettled debts, charges for debt settlement services, and taxes owed on canceled debt, the Debt Settlement Company will have done more harm than good.

The DFPI's proposal is flawed because it does not collect data on the current value of unsettled debts as of the reporting date—only the original value at enrollment. Without knowing how much the average consumer owes as of the reporting date, it will be impossible to answer the critical question of whether participating in debt settlement does more harm than good.
The type of debts targeted by Debt Settlement Companies do not remain at a fixed amount. The amount due grows with interest, late charges, and other fees. This growth, called accretion by the debt settlement industry, can be quite significant, especially because Debt Settlement Companies often tell consumers to stop making payments on the enrolled debts. This accretion can overwhelm the value of any savings on settled debts—especially after accounting for the registrant's fees and taxes on canceled debt.[4]

According to research by the Center for Responsible Lending, consumers must settle at least two-thirds of their enrolled debts to improve their financial position. And that finding was based on assumptions that are highly favorable to the debt settlement industry.[5] But according to data from an industry trade group, most customers settle fewer than that.[6] DFPI will not be able to conduct a risk-benefit analysis of debt settlement registrants or products without data on the dollar amount of debts that do not settle.

We are aware that some registrants may not collect data on unsettled debts. But that does not prevent DFPI from requiring them to begin doing so. Registrants claim to have authorization from their clients to communicate with creditors, so they could simply ask each creditor for the current balance on unsettled debts. If a creditor declines to cooperate, the registrant could ask their client for the current balance. The debt settlement industry markets its ability to reduce consumers' debt. So they should not be allowed to hide or refuse to collect the data needed to prove—or disprove—their claims.

The debt settlement industry touts the settlement rate for individual debts,[7] but that obscures the more important question of whether they can reliably reduce a consumer's total debt burden. The

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[3] This measurement will not address other risks of debt settlement, such as increased collection activities, harm to credit scores, and the related emotional toll.
[4] Even if the consumer is not required to pay taxes for debt cancellation, the creditor will almost certainly submit a 1099-C to the IRS, so the consumer will need to pay a tax preparer to document the reason he or she is not liable for debt cancellation taxes.
[5] Ctr. for Responsible Lending, A Roll of the Dice: Debt Settlement Still a Risky Strategy for Debt-Burdened Households (Nov. 19, 2013), available at https://www.responsiblelending.org/research-publication/debt-settlement-risky-strategy
[6] Will S. Dobbie, Financial Outcomes for Debt Settlement Programs: Estimates for 2011–2020, table 1 (Jan. 15, 2021) (59% of individuals settled at 50% of enrolled accounts; 43% settled 75%).
[7] *See, e.g., id.*

proposed reporting requirement emphasizes data on settled debts. We are concerned that this will produce an unrepresentative picture of the industry's success rates.

Recommendation: Change the annual reporting requirement to include the average total current dollar value of the unsettled enrolled debts still owed by a client as of the reporting date.

II. The proposed reporting requirement is confusing and omits other necessary data.

Subdivision (a) of Proposed § 1042:

This subdivision seeks "The number of California residents who had an existing contract for debt settlement services in effect or who contracted with the registrant for debt settlement services in the prior calendar year but whose contract is no longer in effect." But this is not clear, omits other valuable data, and risks double counting.

The proposed language presumably refers to: (a) the number of residents who had a contract in effect as of the end of the reporting year, and (b) those who contracted during the reporting year and whose contract terminated during the year. But that is unclear. We recommend re-writing this sentence to clearly request both of those numbers. Assuming our interpretation is correct, it would not capture the number of residents who contracted during a prior year and whose contract ended during the reporting year. If the reporting is intended to include consumers who entered into a contract prior to the reporting year and whose contract was in effect as of the end of the reporting year, there will be some double counting from year to year (e.g. consumers who contracted in 2021 and had a contract in effect as of the end of 2022 will be included in the 2021 and 2022 totals).

Recommendation: Re-word the reporting requirement to call for disaggregated data on (a) consumers who contracted prior to the reporting year and had a contract in effect as of the end of the reporting year; (b) consumers who contracted previously and whose contracted ended during the reporting year; (c) consumers who contracted during the reporting year and whose contract was in effect as of the end of the year; and (d) consumers who contracted during the reporting year and whose contract ended during the reporting year.

Subdivisions (c) and (e) of Proposed § 1042:

Subdivision (c) requires "the average dollar amount of debt per resident and the total dollar amount of debt of all residents who contracted for services with the registrant based on the total debt balances upon execution of the contracts with the registrant." Subdivision (e) requires "the average number of debts per resident and the total number of debts for all residents who contracted for services with the registrant . . . ." The reference to "debt," however, is ambiguous. Subdivision (b) refers to the "debts each resident contracted for debt settlement services with the registrant." But subdivisions (c) and (e) do not identify which "debts."[8] So it is unclear whether the debts mentioned in (c) the same ones identified in (b).

[8] Subsections (f) and (g) have the same problem, but the context of these subsections eliminate any ambiguity.

Recommendation: Change the opening clause of (c) and (e) to "For the residents identified in subdivision (a) and the debts identified in subdivision (b) of this section".

Additional Data Points to Add to Proposed § 1042:

Registrants should be required to report, regarding residents identified in subdivision (a), the average number of debts identified in subdivision (b) that were delinquent at the time of enrollment and the average total amount of those debts. This would provide insight into the financial condition of residents using debt settlement services.

III. Make anonymized account-level data available to independent researchers.

The averages to be collected by DFPI will not be sufficient to properly evaluate how debt settlement services affect consumers. A scientifically valid analysis will require a complete data set, including the whole distribution of outstanding debt, settlement amounts, and how that distribution varied by borrower characteristics. We recommend that DFPI compile account-level data from all registrants and make it available to independent researchers who agree to appropriate safeguards, such as those imposed by the University of California Consumer Credit Panel (UC-CCP).

DFPI is authorized to "investigate, research, analyze, and report on markets for consumer financial products or services."[9] And the California Legislature has recognized the harm of "unfair, deceptive, and abusive practices in the provision of financial products and services."[10] DFPI has recognized that debt-settlement customers are economically vulnerable.[11] One aspect of this vulnerability comes from their inability to evaluate the marketing statements made about debt settlement. And the Consumer Financial Protection Bureau has stated that abusive conduct includes taking unreasonable advantage of consumer reliance and gaps in consumer understanding.[12] For these reasons, DFPI would be remiss in its duties if it does not conduct or make possible research on the ultimate question of whether debt settlement does more harm than good.

Recommendation: Collect account-level data from all Debt Settlement Company registrants and make an anonymized version of it available to independent researchers who agree to appropriate safeguards.

General Comments: Debt Settlement Service

We recommend the DFPI further strengthen the regulations by providing "rules identifying unlawful, unfair, deceptive, or abusive acts and practices," which the DFPI is explicitly authorized to do under the CCFPL.

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[9] Fin. Code, § 90006, subd. (d)(2).

[10] Fin. Code, § 90000, subd. (a)(2).

[11] PRO 01-21 Initial Statement of Reasons at 2.

[12] Cons. Fin. Protection Bur., Policy Statement on Abusive Acts or Practices (Apr. 3, 2023) available at https://www.consumerfinance.gov/compliance/supervisory-guidance/policy-statement-on-abusiveness/

I. Omission of Material Information

One area in clear need of such rule-making is the prohibition on omitting material information set forth in Cal. Civil Code 1812.302(a)(3). CLICC is concerned that unless the DFPI fleshes out this requirement by specifying which facts are material to a consumer's decision to enter into a debt settlement services contract, this provision will simply be ignored.

CLICC submits that the following information is undoubtedly material:

- The Debt Settlement Companies' track record of settling debts with the particular creditors the consumer is dealing with;
- The Debt Settlement Companies' track record of settling debts in the dollar range (such as 'under $1,000', 'between $1,000 and $5,000', 'between $5,000 and $10,000' and 'over $10,000') the consumer is dealing with; and,
- The Debt Settlement Companies' track record of saving consumers money after application of debt settlement service fees.

The information regarding the debt settlement services overall track record:

1. Should be placed in very large type such as the 22-point font used below;
2. Should appear on the first page of the agreement; and
3. Information regarding the number of consumers who have lost money using the debt settlement services should be presented in bold, contrasting type.

Example Disclosure Fonts and Statements:

X of our customers (y %) have saved some money after all applied fees by using our services.

X of our customers (z%) have spent more money in fees paid to us than in savings achieved by our services.

II. Disclosure of Settlement Record

The debt settlement Companies' (in the table "DSC") track records with particular creditors and debt sizes should also be placed prominently on the agreement in close proximity to the consumer's signature and could be provided in tabular format such as is found below**:**

Example Disclosure Table:

CREDITOR	Enrolled Debt	Number of DSC customers who owed debts to this creditor	Number of DSC customers who settled debts with this creditor	Percentage of DSC customer who settled debts with this creditor	Number of DSC customers who owed debts in this range	Number of DSC customers who settled debts in this range	Percentage of DSC customer who settled debts in this range
American Express	$11k	744	3	Less than 1%	999	12	Less than 1%
Chase	$6k	825	211	25%	2100	189	9%
Citibank	$4k	950	225	25%	4500	1,432	32%
Discover Bank	$6,500	678	3	Less than 1%	2100	189	9%
Wells Fargo	$800	948	223	25%	6,789	4,898	72%

I have read and understood [the DSC's] performance record with debts owed to my creditors and in amounts like I owe.

_____

Consumer Signature

III. Placement of Fee Disclosure

We request that the DFPI issue regulations relating to the size and placement of the fee disclosure required by Cal. Civil Code Section 1788.302(b)(2)(D).

CLICC members have seen the following from Debt Settlement Companies:

- A contract that does not explicitly state the fee at all; it must be inferred from the payment schedule;
- A 37-page contract where the fees are disclosed in 10-point font on page 7; and
- A 43-page contract where the fees are disclosed in 10-point font on page 23.

None of these fee disclosures were adjacent to a space for the consumer's signature or initials. The DFPI should require the fees to be disclosed in large font in contrasting type and the consumer's signature or initials should be required in an adjacent space.

IV. Continued Access to Account Information

CLICC members have met with many consumers whose account information with Debt Settlement Companies was only available online. This access was subsequently terminated after the consumer defaulted on the debt settlement agreement. Such termination undermines the policies set forth in Cal. Civil Code Section 1812.302(c)(4-5). Consumers are denied access to information on (1) what, if any debts were settled, (2) what fees were taken by the debt settlement services, (3) and any balance remaining or how to request return of the funds.

The DFPI should issue regulations prohibiting Debt Settlement Companies and payment processors from terminating online access to account information until four years after the last transaction posted to the consumer's account.

Conclusion

The proposed rule represents a step forward in protecting California's low-income consumers and puts our state at the forefront of consumer protection efforts. That said, the rule can be further strengthened by adopting the preceding recommendations. We appreciate the opportunity to share our comments and welcome further engagement with the DFPI.

Sincerely,

California Low-Income Consumer Coalition
National Consumer Law Center (on behalf of our low-income clients)