



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

GOVERNOR **Gavin Newsom** • COMMISSIONER **Manuel P. Alvarez**

IN REPLY REFER TO
FILE NO: PRO 01-21

February 4, 2021

INVITATION FOR COMMENTS ON PROPOSED RULEMAKING UNDER THE CALIFORNIA CONSUMER FINANCIAL PROTECTION LAW (PRO 01-21)

BACKGROUND

On September 25, 2020, Governor Newsom signed AB 1864 (Chapter 157, Statutes of 2020), establishing the California Consumer Financial Protection Law (CCFPL) under Division 24 of the Financial Code. The CCFPL makes it unlawful for “covered persons” or “service providers,” as defined by Financial Code section 90005, to:

- 1) Engage, have engaged, or propose to engage in any unlawful, unfair, deceptive, or abusive act or practice with respect to consumer financial products or services.
- (2) Offer or provide to a consumer any financial product or service not in conformity with any consumer financial law or otherwise commit any act or omission in violation of a consumer financial law.
- (3) Fail or refuse, as required by a consumer financial law or any rule or order issued by the department thereunder, to do any of the following:
 - (A) Permit the department access to or copying of records.
 - (B) Establish or maintain records.
 - (C) Make reports or provide information to the department.

(Fin. Code, § 90003, subd. (a).)

The CCFPL also authorizes the Department of Financial Protection and Innovation (DFPI) to establish rules relating to covered persons, service providers, and consumer financial products or services. These include:

1. Rules to “establish reasonable procedures to provide a timely response to consumers, in writing where appropriate, to complaints against, or inquiries concerning, a covered person,” and similar rules for providing complaints and inquiry responses to the DFPI. (Fin. Code § 90008, subds. (a) and (b).)
2. Rules “regarding registration requirements applicable to a covered person engaged in the business of offering or providing a consumer financial product or service,” (Fin. Code § 90009, subd. (a)(1)) including rules:

- a. For registration fees (Fin. Code § 90009, subd. (a)(1));
 - b. Facilitating oversight of covered persons and assessment and detection of risks to consumers (Fin. Code § 90009, subd. (b)(1));
 - c. Requiring covered persons to generate, provide, or retain records to facilitate oversight and to assess and detect risks to consumers (Fin. Code § 90009, subd. (b)(2)); and
 - d. Ensuring that covered persons are legitimate and able to perform their obligations to consumers (Fin. Code § 90009, subd. (b)(3)).
3. Rules identifying “unlawful, unfair, deceptive, or abusive acts or practices.” (Fin. Code § 90009, subd. (c).) Such rules “may include requirements for the purposes of preventing those acts or practices.” (Id.)
 4. Disclosure rules for consumer financial products and services to assist consumers in understanding the costs, benefits, and risks of those products and services. (Fin. Code § 90009, subd. (d).)
 5. Rules defining “unfair, deceptive, and abusive acts and practices in connection with the offering or provision of commercial financing... or other offering or provision of financial products and services to small business recipients, nonprofits, and family farms.” (Fin. Code § 90009, subd. (e).) The DFPI may also, by rule, require data collection and reporting on “the provision of commercial financing or other financial products and services.” (Fin. Code § 90009, subd. (e).)
 6. Rules requiring covered persons and services providers to file “annual or special reports, or answers in writing to specific questions.” (Financial Code § 90009, subd. (f)(2).)

The CCFPL also provides that the DFPI may interpret and implement “all California credit cost provisions [including rate and fee caps] as to their applicability to consumer financial products and services.” (Fin. Code § 90009, subd. (f)(3).)

INVITATION FOR COMMENTS

The DFPI seeks input from stakeholders in developing regulations to implement the CCFPL. Interested parties may submit comments related to any area on which the DFPI has authority to adopt rules. The DFPI has identified various areas where rulemaking may be appropriate, desirable or necessary at some point. Below, the DFPI has formulated topics and questions to assist interested parties in providing input on rulemaking. However, stakeholders are not limited to providing comments in the areas identified by the DFPI and may comment on any potential area for rulemaking. The DFPI also invites stakeholders to provide example language for regulations relating to their responses to the questions below.

POTENTIAL TOPICS FOR RULEMAKING

1. Definitions

- 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?
- 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 the financial product or service and explain why it meets the requirements set by Financial Code section 90005, subdivision (k)(12).

2. Exemptions

- a. Financial Code section 90002 describes certain entities that are exempt from the CCFPL. Should the DFPI issue regulations to clarify the scope of these exemptions?

3. Registration Requirements

- 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.
- b. 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?

4. *Complaint Handling*

- a. What reasonable procedures should the DFPI establish to ensure that businesses provide timely responses to consumer complaints and inquiries? (Fin. Code § 90008.) 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?
- 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?
- 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?
- 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?
- 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”?

5. *Unlawful, Unfair, Deceptive and Abusive Acts and Practices (Consumer)*

- 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.

6. *Unfair, Deceptive and Abusive Acts and Practices (Commercial)*

- a. Are there specific acts or practices in the commercial financing market or in the offering and the provision of financial products or services to small business recipients, nonprofits, and family farms that stakeholders believe are 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 unfair, deceptive, or abusive. Should the DFPI issue a regulation to define the act or practice as unfair, deceptive, or abusive? (Fin. Code § 90009, subd. (e).)

7. *Data Collection and Reporting for Commercial Financing*

- a. Should providers of commercial financing and other financial products and services to small business recipients, nonprofits, and family farms be required to collect and report data to the DFPI? (Fin. Code § 90009, subd. (e).) If so, what data should the DFPI require to be collected and why?

8. *Disclosures*

- 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, sub. (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.

9. *Clarifying the Applicability of California Credit Cost Provisions*

- a. Should the DFPI issue regulations clarifying the applicability of state credit cost limitations, including rate and fee caps, to consumer financial products and services offered by covered persons? (Fin. Code § 90009, subd. (f)(3).) If so, how should the regulations clarify the applicability of those limitations?

Economic Impact

For any recommendation relating to rulemaking, the DFPI invites stakeholders to provide a description of the economic impact (if known) of the recommendation for California businesses and consumers.

TIME FOR COMMENTS

The Commissioner invites interested parties to submit comments by **March 8, 2021**.

WHERE TO SUBMIT COMMENTS

You may submit comments by any of the following means:

Electronic

Comments may be submitted electronically to regulations@dfpi.ca.gov. Include "PRO 01-21" in the subject line and copy Charles Carriere at charles.carriere@dfpi.ca.gov.

Mail

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

CONTACT PERSONS

Questions regarding this invitation for comments may be directed to Charles Carriere, Senior Counsel for the Commissioner, at (415) 722-9655.