

March 8, 2021

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

**Re: PRO 01-21 — Proposed Rulemaking Under the CCFPL**

Dear Mr. Carriere:

On behalf of the American Financial Services Association (“AFSA”),<sup>1</sup> thank you for the opportunity to provide comments on the Department’s February 4 proposed rulemaking under the California Consumer Financial Protection Law (PRO 01-21). AFSA represents financial institutions of all sizes across many of the industries DFPI oversees. We believe clear rules that take into account existing laws benefit consumers and financial institutions alike, and we look forward to engaging with the Department throughout the rulemaking process.

*Exemptions*

Given the extensive requirements under state and federal law with which existing licensees and other federally chartered financial institutions already comply, additional requirements under the CCFPL would be duplicative and unnecessarily create a significant compliance burden with limited consumer benefit. The legislature recognized this reality, as evidenced by the CCFPL’s list of exempt entities. Accordingly, any proposed rulemaking should also reflect this fact by reinforcing the exemption and clarifying that the exemption will be interpreted as broadly applicable to these entities and their affiliates.

*Complaint Handling*

Complaints are a valuable tool for improving business, identifying systemic issues, and detecting potential violations of applicable consumer protection laws. Monitoring consumer complaints is a core pillar of an effective compliance management system. Importantly, the process takes time, as a company must investigate a complaint, refer it to the relevant company segment, properly identify the consumer if incomplete information was provided and ensure a thorough understanding of the issue before responding. To that end, we recommend that businesses are provided with at least thirty (30) days to investigate and respond to verified complaints with an opportunity to request a fifteen (15) day extension if needed. This timeline would satisfy

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<sup>1</sup> Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

business needs regardless of type of business or product, while still providing consumers with a timely response to their concerns.

With regard to complaint process handling, some states have adopted the State Examination System (SES) for complaint handling processes to allow for secure collaboration with a regulator. As more states move to adopt SES, it will be critical to ensure private consumer data in the system remains secure. Provided that SES maintains the highest level of independently audited privacy protections, and creditors are not held in any way responsible for breaches of the system, we believe DFPI should consider the complaint handling process. Importantly, this approach would allow businesses to work within existing systems and make for a more streamlined complaint process than DFPI requiring 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 DFPI establishes. Additionally, DFPI should clarify what constitutes “nonpublic or confidential information” in its rulemaking.

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

UDAAP claims should not be based upon any conduct that is expressly approved or provided for by either federal or state law; or is conduct that is considered standard practice in the finance industry, where there is no prior rule, regulation, or advisory opinion that provides the finance industry with prior notice that the conduct at issue is either considered illegal or otherwise prohibited.

#### *Commercial Financing*

Existing law for commercial financing transactions provides for entities exempt from the requirements (Fin. Code § 22801). The rulemaking should make clear that these exempt entities are also exempt for the purposes of any commercial UDAAP claims or data collection requirements.

Additionally, any rulemaking for commercial financing transactions should consider the size and sophistication of the parties to the transaction as well as amount of the loan at issue. Complex transactions between sophisticated parties, who are often represented by professionals, should be outside the scope of this rulemaking. Further, as recognized in other contexts, certain categories of parties should be excluded, such as institutional accredited investors, qualified institutional buyers, qualified purchasers, and entities that are owned by such parties.

#### *Disclosures*

It is important that consumers have a strong understanding of the terms and costs of credit, and existing longstanding state and federal laws provide for robust sets of disclosures throughout credit transactions. Additional disclosures would be duplicative and could potentially leave consumers with a worse understanding of a specific transaction if variations of the same terms are required to be expressed in slightly different ways and across multiple forms.

Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 202-469-3181 or [mkownacki@afsamail.org](mailto:mkownacki@afsamail.org).

Sincerely,



Matthew Kownacki  
Director, State Research and Policy  
American Financial Services Association