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Department of Financial Protection and Innovation

By e-mail to

Attn: Sandra Sandoval
regulations@dfpi.ca.gov
300 S. Spring Street, Suite 15513
Los Angeles, California 90013

Re: Invitation For Comments On Proposed Rulemaking Under the California Consumer Financial Protection Law: Consumer Complaints (Pro 03-21)

Dear Ms. Sandoval:

This letter is submitted by the California Financial Service Providers (“CFSP”) as a comment to the Invitation for Comments On Proposed Rulemaking Under the California Consumer Financial Protection Law: Consumer Complaints issued by the Department of Financial Protection and Innovation (the “Department”) on August 18, 2021 (the “Proposal”). CFSP is a trade association representing business entities licensed under the Consumer Financing Law (“CF Law”), the California Deferred Deposit Transaction Law (the “CDDTL”), the Money Transmitters Law (the “MT Law”), and the Check Cashers Law. CFSP has been serving our members since 1956, and currently represents over 50 separate business entities holding several hundred licenses issued by the Department. CFSP appreciates the opportunity to comment on the Proposal.

CFSP members are engaged in a variety of business operations pursuant to myriad regulatory paradigms. Our members generally engage in offering their customers a variety of consumer and/or commercial loan products under the CF Law; short-term consumer loans under the CDDTL; cashing checks under the Check Cashers Law; and money transmission under the MT Law. Some engage in all four of those activities, while others specialize in only one. Some of our members are nationwide publicly-traded companies; and some are “mom and pop” sole proprietorships. All of our members who offer consumer-purpose loans are subject to supervision and examination by the Department as well as the Consumer Financial Protection Bureau (the “CFPB”). In fact, many of our members have been examined by the CFPB: particularly members who participated in the CFPB’s SBREFA panels¹. This broad spectrum of business models leads CFSP to be wary of one-size-fits-all regulations that do not take into consideration the simplicity of certain products and the resources/limitations of small businesses.

¹ Under the process established by Congress in the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the CFPB is required to consult with representatives of small entities likely to be affected directly by the regulations the CFPB considers and to obtain feedback on the likely impacts the rules the CFPB considers would have on small entities. To that end, several members of CFSP participated in those panels, and most were examined by the CFPB shortly thereafter.



Initial Concerns

As a preliminary matter, CFSP has three general areas of concern about the Proposal. The first is that it is largely duplicative in content to the CFSP's Consumer Complaint Response requirements. The Proposal thereby adds burdens for California businesses without adding any meaningful consumer protections. The second is that the Department has not presented any data based on its existing complaint processes to demonstrate the necessity of the Proposal. The third is that as currently drafted, the Proposal is excessively broad.

CFSP Customer Complaint Requirements: As part of its Examination Procedures for Compliance Management Review, the CFPB expects entities it examines to have developed and implemented *Consumer Complaint Response policies and procedures*. See 201708_cfpb_compliance-management-review_supervision-and-examination-manual— Examination Objectives, at pp. 13-15. As a result, those entities have uniformly developed such policies and procedures, a sample of which is provided as Exhibit 1. Accordingly, before it imposes additional compliance burdens upon California entities, the Department should review and familiarize itself fully with what the CFPB is already doing, and avoid duplicative requirements.

Department's Data. Next, CFSP believes the Department needs to examine its assumptions with regard to consumer complaint responses. In this regard, we note that, in early July of 2020, CFSP was interested in whether there were any particular categories of complaint that the Department was seeing during the Covid shutdown. CFSP thought that if there were issues that its members could adjust and try to preclude any further complaints. A CFPS staff member contacted an appropriate Department staff member and asked him whether he had seen any categories of complaints increasing. At that time, the Department representative advised that the Department had begun to track complaints centrally, so he wouldn't necessarily have seen any particular complaint, but that he would have been informed if there had been any significant developments in the nature of complaints in his area, and he hadn't heard about anything.

Shortly thereafter, the Department held an open informational call on the contents of A.B. 1864, which was then in the abbreviated legislative process. During the call, a representative of the Governor's office stated that the administration was (purportedly) that there was a huge spike in complaints by consumers. (Note that this was a non-Zoom conference call, so the identity of the person making this statement is unknown.) The CFSP representative communicated the conversation with the Department representative described above, and asked the then-Commissioner whether the Department had in fact seen an increase in complaints. After a few minutes of silence, then-Commissioner Alvarez stated that the Department was not prepared to address the issue of complaints to the Department during Covid.

Second, this event followed CFSP's Public Records Act request (in 2017 or 2018) to obtain the Department's compilation of bases for consumer complaints under the CDDTL. It turned out that the Department had never done a methodical assembly or analysis of that data. Indeed, in fact, the data shows that consumer complaints have generally fallen, rather than risen, during Covid. However, it is indisputable that business entities expenses have risen during Covid and that many businesses have



failed during Covid due to the effects of the virus, increased operating expenses, and a reduction in business transactions.

CFSP thinks that that CFSP feels that the Department should first study both its own internal data and the information that has been compiled by the CFPB in this area, before it imposes burdens on industry to establish procedures, recordkeeping, and reporting requirements that may or may not be of use to the Department but that will surely be time consuming and expensive to compile. The Department should strongly consider both the federal mandate and the extremely low level of complaints.

Categorization of Complaints: Third, CFSP and its members are fully committed to the resolution of all meritorious customer complaints in a manner that is fair to the customer. Having said that, we believe that any requirement should contain a carveout for frivolous and irrelevant complaints. For example, we believe that nothing in any law administered by the Department should require a business entity to keep or report records of complaints by customers about requiring masks or vaccinations for entry to premises. We further note that a model for this distinction exists in the Federal Trade Commission’s Regulation on the Duties of Furnishers of Information to Consumer Reporting Agencies, at 16 CFR Part 660, which provides that those duties do not apply to disputes if the information furnisher has reasonably determined that the dispute is frivolous or irrelevant, with standards for making that determination (16 CFR 660.4(f)). Thus, again, we believe that the Department should think this through some more and issue a targeted regulation to effect what it reasonably wants and cannot obtain from existing sources.

Specific Comments to the Language of the Proposal

Next, we provide specific comments on proposed Rules 90008.1 through 90008.6 to Title 10 of the California Code of Regulations. Our comments and suggestions are provided in chronological order and are intended to be constructive in nature.

Draft Rule 90008.1: Definitions

Complaints and “Inquires:” An “Inquiry” is defined so broadly that any question from a consumer about how a loan or other financial service works would require a covered person to treat it in essence identically to a “complaint.” As proposed, this “Inquiry” concept is operationally unrealistic and should be mitigated to reduce the burden, to all stakeholders involved, particularly small businesses.

Draft Rule 90008.3: Complaint Processes and Procedures

- 1) First sentence: Paragraph (2) of subsection (a) of Draft Rule 90008.3 speaks to the submission of both written and oral complaints, but the introductory language of Draft Rule 90008.3 does not clarify which types of complaints the section addresses. We suggest clarification that this rule is referring to both written and oral complaints by making the following change to the first sentence of Draft Rule 90008.3: “A covered person shall respond to consumer complaints and shall develop and implement written policies and procedures for



responding to complaints, including a process through which a complainant may submit a complaint to the covered person and receive a final decision.”

- 2) Second sentence: Again for clarity and to ensure that the introductory paragraph is consistent with the language of the remainder of the draft rule, we suggest the following change: “The Department may review the complaint process, including records of each complaint received, to assess the effectiveness of the policies and procedures established to respond ~~actions taken in responding~~ to complaints.”
- 3) ¶ (a)(1) We believe that the requirement that each business to draft its own complaint form is too heavy a burden on the smallest businesses, especially in a vacuum, and suggest that the Department provide a standard complaint form for use by licensees. In the alternative, we request that a procedure be added whereby a covered person may submit a proposed complaint form to the Department for review, with a safe harbor that if the Department does not disapprove the draft form within 45 days, it is deemed approved.
- 4) ¶ (a)(4) Requires each covered person in the state of California to maintain a toll-free telephone number. This is an unreasonable financial and administrative burden upon small businesses, for which the Department has no statutory authority and has conducted no research into the costs. This provision should be deleted.
- 5) ¶ (a)(5) Includes the phrase “and, if supported by the covered person, the complainant’s preferred language” when describing the circumstances under which a covered person must make the complaint process available to a complainant in the complainant’s preferred language. We suggest deleting the language quoted above for three reasons: first, it has the potential to lead to disagreements between the Department and covered persons about whether and under what circumstances a particular covered person *should* support complaints in languages other than those in which the consumer’s contract is written (a topic on which the draft regulations are silent and thus on which the Department is failing to provide covered persons necessary guidance); second, the language, while well-intentioned, is likely to actively discourage covered persons from offering alternative language support beyond the language of the contract, because doing so will place them in the Department’s regulatory crosshairs; and third, the language does not represent an actual requirement but is merely aspirational.
- 6) ¶ (a)(6) Prohibits a covered person from imposing a time limit for complainants to file a complaint. We understand that the Department takes the position that statutes of limitations do not apply to its examination or enforcement authority. Without addressing the issue of how that position interplays with the due process or equal protection clauses of the federal and state constitutions, we must point out that the Department has no authority to extend statutes of limitations as to third persons. We therefore suggest that “a time limit” be changed to “an unreasonable time limit.”
- 7) ¶ (b) Requires a covered person to provide each complainant with the name, telephone number, and email address of a representative of the covered person who may be contacted regarding the complaint. This language implies the existence of a single point of contact (SPOC)



requirement, despite the fact that the statute lacks a SPOC requirement. Because the language of the draft regulation goes beyond existing statute as currently drafted, we request that this language be revised as follows to better align the regulation and the law: “. . . including the date of receipt, a unique tracking number to identify the complaint in subsequent communications, and the telephone number and email address the complainant may use to contact the covered person regarding their complaint”. ~~name, telephone number, and email address of the covered person’s representative who may be contacted regarding the complaint.~~ We believe that this will also address the realities of the marketplace, which is that there is turnover among staffs of covered persons. We understand the part of the purpose of this provision is to prevent consumers from being shunted from one person to another, but a more efficient requirement would entail a dedicated destinations email (i.e. DFPIComplaints@abccorp.com) and allow the covered person to determine who handles the matter through completion.

- 8) ¶(c)(1)(A) Requires a covered person to document the name of the individual who decided not to investigate complaints deemed to require no further investigation and the reason an investigation was not needed. It is unclear, as drafted, if the Department is seeking the name of the (potentially junior) employee who participates in the initial consumer intake, that individual’s supervisor, or someone even more senior. It is also unclear, as drafted, whether an acceptable reason for failing to investigate further can be as simple as “policies and procedures did not require further investigation” or “complaint deemed frivolous” or even “customer inaccurately identified the company as his or her counterparty” (which happens with surprising frequency), or whether the Department is seeking to learn and record which precise provision in the covered person’s policies and procedures supported the decision not to investigate. Failure to clarify these points has the potential to lead to confusion among covered persons and to frustration on the part of the Department, when it finds different covered persons interpreting this requirement differently.
- 9) ¶(c)(1) Requires a covered person to evaluate complaints in house, and not delegate them to a third-party. This is a grossly inappropriate and burdensome usurpation of management authority. There is no provision in law that authorizes the Department to mandate how a covered person determines how to address regulatory obligations vis-à-vis responding to consumer complaints. The proposed language also, on its face, implicates the attorney-client privilege, as evaluation certain complaints may require consultation with both in-house and outside counsel. This sentence should be deleted.
- 10) ¶(c)(3)(A) Requires a monthly review of complaints by the corporate officer. This is a grossly inappropriate and burdensome level of micromanagement and is also ambiguous as to the meaning of “officer,” given that many entities (particularly smaller companies) might have a compliance “officer” who handles complaints but is not a “corporate” officer. In addition, so long as the covered person is in compliance, it should be up to management as to how often this review is conducted. For example, if a covered person has no complaints over the course of the year, it should be able to make this review on a quarterly or semi-annual basis. The Department has no statutory authority to mandate this level of timing and it is an unnecessary overage which is unnecessary to the joint goal of CFSP and the Department of achieving appropriate levels of consumer protection.



- 11) Paragraph (1) of subsection (d) requires a covered person to provide a consumer with “all target dates for further actions” by that covered person related to the consumer’s complaint. It would be far less burdensome on covered persons and equally as helpful for consumers if covered persons were required to provide the time period within which the covered person is required to issue the consumer an initial response and any subsequent responses, rather than the specific date(s) by which the responses are required. We suggest revising the language, as follows: “The procedure must include a process for recording the status of a complaint and the time period within which the covered person is required to issue the consumer an initial response and any subsequent responses” ~~all target dates for further actions, including the issuance of a final decision.~~ Further, if the Department wants specific dates here, why not just use the dates that the CFPB uses?
- 12) ¶(d)(2) Requires the tracking to be in a format accessible to the Department upon request. This paragraph raises three issues. First, it is unclear, as drafted, what constitutes a format accessible to the Department. Based on previous experiences, CFSP is concerned about IT or other impossible format demands being placed upon covered persons by the Department. Second, it is unclear, as drafted, what safeguards the Department intends to utilize and what safeguards the Department expects covered persons to utilize to protect consumer’s non-public personal information, if the Department requests that covered persons submit their complaint data to the Department. Third, this paragraph would be clearer if it were more grammatically correct (e.g., “The tracking shall be in a format accessible to the Department and shall be provided to the Department upon request.”)
- 13) ¶(d)(3) Requires a covered person to provide a response within three calendar days to complainants who contact the covered person for a status update. A blanket rule of a three-day response requirement is absurdly short and demonstrates a lack of familiarity with operational needs and capabilities of covered persons, especially small businesses. Like the paragraphs immediately above, and below, this paragraph raises three issues. First, a three-calendar day requirement may be impossible during holiday periods or weekends; if the Department wishes to require a quick response, it should require a response within three *business* days. Second, as the language is drafted, it is unclear what type of response a covered person is required to provide (i.e., if a consumer contacts the covered person by phone, may the status update be provided by phone, and if a consumer contacts the covered person by email, may the status update be provided by email?). Finally, we suggest that the Department clarify that, for the three-day requirement to be triggered by receipt of a consumer’s email, the consumer’s email must be sent to the email address previously provided by that covered person to that consumer for contacting the covered person about their complaint. If a consumer uses a different email address to contact the covered person, it may take some time for that consumer’s email to be routed to the correct person or division within the covered person’s company. It is unfair to impose a three-day response requirement on a covered person to respond to an email that is sent to the wrong location within that company.
- 14) ¶(e)(1) Requires a decision as to each complaint within 15 days of receipt of the complaint, or 7 days where the complainant alleges financial hardship. If only the world, and the financial



services industry, were so clear and simple that every dispute or complaint could be resolved within seven days, or even 15 days! But it's not, and this is simply an unreasonable requirement. Again, this rule requires considerably more research and analysis by the Department, and a more nuanced solution. The time periods proposed here will often be far too short to allow a covered person to conduct a complete review of a complex issue and reach a final decision about that issue. At a minimum, we recommend substituting a business day requirement in lieu of the calendar day requirement in all three places where you cite requirements. Requiring a final decision within fifteen days (thirty days if more information is required from a third party) is simply infeasible and is likely to impose a significant compliance burden on all covered persons, especially smaller covered persons. We therefore urge the Department to consider the input it receives from covered persons regarding operational realities and compliance costs of its proposed requirements and to modify required response times accordingly. We further note that this dual structure raises a strong possibility that every complainant will allege a financial hardship, even where that claim is false. And, even if the claim is true, the hardship may well have nothing to do with the covered person. Finally, many complaints simply cannot be decided within 15 days, particularly if the complaint alleges allegations related to third parties. Therefore, we suggest that the Department adopt the CFPB timing for responses to complaints.

- 15) ¶(e)(1)(B) This language creates a loophole likely to be exploited to the detriment of covered persons. As drafted, it speeds up the likely unrealistic timeframes required earlier in subsection (e) when a complainant claims financial hardship, whether such claim is true or false. Not only does the draft language fail to require any documentation on the part of a consumer claiming such hardship, but it also fails to define what the Department considers a qualifying financial hardship. It also takes a time period for response that is likely unrealistic as drafted and shortens it considerably, imposing a time burden likely to be impossible for covered persons to meet. This provision should be deleted.
- 16) ¶ (e)(3) Requires a covered person to ensure that there is no adverse action taken against a complainant due to the filing of a complaint. While CFSP has no objection to this concept (which essentially follows a concept of the Federal Equal Credit Opportunity Act), this requirement would benefit from several clarifications. First, the Department should clarify that it does not consider a covered person's failure to satisfy the demands of a consumer who submits a complaint as an adverse action. Covered persons should be free to act on complaints as they see fit, after investigating those complaints. Second, we believe it is critical to clarify that the prohibition against adverse action refers to adverse action *by the covered person*. Failure to make this clarification will make the covered person liable for the acts of others outside its control. The following changes would implement the suggestions above: "A covered person shall not take adverse action against a complainant in retaliation for the filing of a complaint, provided, however, that failure of a covered person to resolve a complaint to the complainant's full satisfaction shall not represent an adverse action for purposes of this paragraph." ~~The covered person shall ensure that there is no adverse action taken against a complainant, including cancellation of the contract, due to the filing of a complaint.~~
- 17) (h) Requires all covered persons to submit a quarterly complaint report to the Department. Not only is a quarterly reporting requirement likely to be burdensome on covered persons, but it is



also likely to result in significant costs for the Department to review what are likely to be tens of thousands of submissions every three months. In lieu of a quarterly reporting requirement, we suggest that the Department start with an annual reporting requirement, with the understanding that it may ask specific covered persons to submit complaint data more frequently (either semi-annually or quarterly), once it has had an opportunity to review the initial submissions. The submission of quarterly complaint data should be reserved only for those covered persons about which the Department has specific concerns related to complaints based on real data. Further, CFSP strongly objects to the contents of such report being made available to the public. There is no statutory authority for this provision, and we believe it is neither necessary nor appropriate. And, to the extent that this reporting includes information identifying any specific employee of the covered person, we believe that public disclosure of that information would violate that employee's right to privacy under the California Constitution.

- 18) ¶ (h) This includes thirteen types of complaints. Several of the categories of complaints appear duplicative, and others are simply unclear. For example, how does dissatisfaction with a (presumably third-party) service provider differ from dissatisfaction with a third party to whom the covered person referred the consumer or from dissatisfaction with a third party who brought the consumer to the covered person through lead generation? How does dissatisfaction with a covered person differ from more specific concerns about the actions of the covered person? Furthermore, what does it mean to have trouble during the payment process? Does that mean that a consumer is unable to pay the covered person or that a consumer's payment is not recorded by a covered person in a timely manner?

At a minimum, we recommend that the types of complaints be grouped into two categories: 1) complaints about the covered person and 2) complaints about a third party other than the covered person. Within each of these categories, we suggest a relatively small number of sub-categories: false or misleading statements or representations, including disclosures; imposition of inaccurate or improper fees or interest; failure to promptly credit consumer payments; attempts to collect debt not owed; dissatisfaction with customer service personnel or response times; and "other (please specify)." The descriptive categories should capture all or most of the most common types of complaints without resulting in confusion or double-counting, and the more generic "other" category will still allow consumers to describe and covered persons to document other types of complaints.

- 19) Missing Information: Finally, draft Section 90008.3 excludes three important categories of potential complaints: 1) repeat, identical or nearly identical complaints from the same consumer about the same issue that has been previously resolved; 2) unique complaints sent by a third party on behalf of a consumer; and 3) multiple identical or nearly identical complaints sent by a third party on behalf of multiple consumers. With respect to all these categories, we suggest the addition of language clarifying that, once a covered person has responded to an initial complaint from a consumer or a consumer's representative, it shall not be required to respond to subsequent, identical or nearly identical complaints from the same consumer about the same issue. With regard to the second and third category, we suggest that permitting such inquiries will further the unauthorized practice of law by "credit service organizations" and "credit repair



agencies,” which our members see with some frequency and have observed to be almost invariably highly potentially harmful to consumers. Therefore, with such inquiries, we suggest the addition of language clarifying that once a covered person has responded to an initial inquiry from a consumer, it shall not be required to respond to subsequent, identical or nearly identical inquiries from the same consumer about the same issue, and shall not be required to respond to any inquiries purporting to be on behalf of a consumer that do not come from a properly designated legal representative of the consumer.

Draft Rule 90008.4: Inquiry Processes and Procedures

- 20) General: CFSP regards this draft rule as highly burdensome, overreaching, and lacking any evidence-based justification for its necessity. It is understandable that the Department has an interest in a covered person’s complaint procedures, but to mandate a process where a covered person must document every oral conversation wherein a question is asked about a product or service is complete unreasonable. Based on the extremely broad definition of a “Inquiry”, a mere question about the operating hours or the street address of a covered person would fall within its scope. Every time a request for a product brochure or a question about how a loan works would necessitate collecting information from the inquirer. Is it really the Department’s intention that covered persons obtain from each consumer who asks about a product’s cost for his/her address, phone number and email address?

CFSP is unaware of any other type of business in California that is subject to this level of operational burden. If implemented, covered persons would spend the majority of their time attempting to document nearly all questions from the public simply to comply with this proposed rule. Our members, per their existing complaint procedures, already determine when a consumer’s statements rise to the level of a complaint. Asking to identify, track, and report on each inquiry would serve little to no consumer benefit but only distract from our members’ ability to address actual complaints. **Therefore, CFSP strongly objects to Proposed Rule 90008.4 and asks that it be stricken in its entirety.** Nevertheless, if the Department elects to continue as proposed, we have specific concerns with the provisions of its proposal.

As drafted, it is unclear if the inquiry procedures apply to inquiries from *all* consumers, or only those posed by customers of a covered person. We recommend clarifying this point and further suggest that the rule be limited to persons who are either under contract with the covered person or have submitted complete applications to the covered person.

- 21) ¶ (b) The time periods provided for in raise the same concerns as those described above in connection with Draft Rule 90008.3. They are overly short for all covered persons, unlikely to be operationally feasible, and are likely to be very burdensome on smaller-sized covered persons. At a minimum, we recommend replacing all references to calendar days with references to business days. But, as noted earlier, we believe that even if a calendar- to business-day change is made, the response periods contained in the draft rule are likely to represent a significant compliance burden on covered persons, especially smaller-sized entities.



22) ¶ (c) Includes four categories of possible inquiry, which are not only unclear in places, but which also appear to contain significant overlap. At a threshold level, it is unclear if the categories refer to generic types of questions about the product or service offered by the covered person or to questions specific to the individual consumer making the inquiry. It is also unclear where one category stops and another starts. For example, how does a fee differ from the cost of a product or service? How is a question about accessing funds different from a question about how a product or service works? To resolve confusion, we suggest collapsing your paragraphs (1) and (2) into a single category titled “specific questions regarding the cost of the product or service to the consumer;” combining paragraphs (3) and (4) into a single category titled “specific questions about how the consumer may use the product or service;” and adding two additional categories: “specific questions from a consumer about other topics (specify)” and “general questions about the cost or nature of the product or service.”

Having said the above, CFSP regards this provision as highly burdensome and overreaching, especially for smaller entities. Does this mean that a policy needs to be developed to record and report every time a customer says, “Why does it cost that much?” That would be completely unreasonable. Therefore, in this regard, we suggest that this subsection (c) be deleted in its entirety. If the Department will not do that, then we request the Department develop and issue for comment model forms for this procedure, or that the form submission and approval procedure suggested for ¶ 90008(a)(3) be implemented here to preclude unreasonable and unsuccessful guessing-game requirements for covered persons.

23) Beyond the need to align the time periods specified in paragraphs (3), (4), and (5) of subsection (e) with the time periods specified in subsection (b), the information sought by these three paragraphs represents a level of granularity whose value is unclear, either to consumers or to the Department. Inquiries are not complaints; they are simply questions, and (subject to further clarification by the Department) they may be posed by persons who are not customers of the covered person. Why is it important for the Department to know whether a covered person responds to an inquiry in less than three days, between three and seven days, or in more than seven days: We recommend that the Department choose a period of time within which it believes most simple inquiries should be answered (perhaps five business days) and ask covered persons to report on how many were answered within that time period.

24) General: In a similar vein as the comments on draft Section 90008.3 above, your draft Section 90008.4 excludes three important categories of potential inquiries: 1) repeat, identical or nearly identical inquiries from the same consumer about the same issue; 2) unique inquiries sent by a third party on behalf of a consumer; and 3) multiple identical or nearly identical inquiries sent by a third party on behalf of multiple consumers. With respect to the first category, we suggest the addition of language clarifying that once a covered person has responded to an initial inquiry from a consumer, it shall not be required to respond to subsequent, identical or nearly identical inquiries from the same consumer about the same issue, and shall not be required to respond to any inquiries purporting to be on behalf of a consumer that do not come from a properly designated legal representative of the consumer.



The second and third issues will require additional clarification. First, we suggest that the Department provide a way for third parties to submit inquiries on a consumer's behalf, *subject to written approval from a consumer*, with guidance regarding whether the covered person's response should be sent to the third party, the consumer, or both. Second, we suggest you add language clarifying that, once a covered person has responded to an initial complaint from a third party on behalf of a consumer, it shall not be required to respond to subsequent, identical or nearly identical complaints from that third party regarding that same issue and that same consumer.

Once again, we reiterate our strong objection to Draft Rule 90008.4. As demonstrated above by the numerous problems with its specific mandates, the concept of identifying, tracking and reporting on each and every consumer request is not realistic.

Draft Rule 90008.5: Processes and procedures for covered persons to provide a timely response to the Department

25) ¶ (a) As a preliminary matter, it is unclear whether the Department expects this section to be self-executing. While there is a broad statutory definition of "covered persons," there is currently no requirement for such covered persons to register with the Department. This subsection would apparently create such a requirement, and a violation for any coverage person that did not do so. We doubt this is the Department's intent, but clarification is certainly needed here.

26) ¶ (b) This is a third set of written policies and procedures that every covered person is required to develop. We reiterate the comments we have made to Sections 90008(a)(1) and 90008.4(c).

However, we believe that these three portions of the Proposal illustrates that the Department is unaware of the impact that this proposed rule will have in its current form on covered persons, especially on small entities. We believe it is incumbent upon the Department to engage in independent research for that purpose. Of course, CFSP will be happy to engage with the Department to assist in that inquiry.

To illustrate this point, CFSP will offer the example of one of our members, who will not be identified in order to respect her privacy. This member is an immigrant who holds a CDDTL license and cashiers permit, and is a registered agent of a licensed money transmitter. She operates a storefront in a small strip mall in a nonaffluent suburb. Her husband is physically disabled and she is his and her sole support. She occasionally has a part-time assistant, but she is at work every hour that that store is open. She is responsible for every aspect of the business, by herself. Does the Department really expect that she can comply with all of the requirements of this proposed regulation, or is it the Department's intention that she be forced out of her



business? This is not a hypothetical example, but a real person who will be crushed financially if this Proposal takes effect in its current form.

¶(b) It is unclear if the Department expects covered persons to respond to requests from the Department regarding consumer complaints and consumer inquiries before, contemporaneously with, or after responding to the consumers making those complaints and inquiries. It appears that the Department envisions two separate sets of time periods within which a covered person must provide a response: (1) the time periods that begin when the covered person receives a complaint or an inquiry from a consumer and (2) the time periods that begin when the covered person receives a request from the Department about that complaint or inquiry. Tracking two separate sets of time periods for the same complaint or inquiry represents a significant burden on covered persons and complicates the process unnecessarily.

We strongly suggest that the Department simplify the process by requesting one of two responses from covered persons when it inquires about the status of a complaint or inquiry: (1) for complaints on which the covered person has already issued a final decision to the consumer and for inquiries for which the covered person has already responded to the consumer, the covered person shall provide a copy of its decision or response to the Department (this is what the Department is proposing in paragraph (1) of subsection (b) and paragraph (1) of subsection (c)); (2) for complaints and inquiries the covered person is still investigating, the covered person should be required to tell the Department it is still investigating and should be required to provide the Department with its final decision or its response to the inquiry within the same time period described in paragraph (1), after it provides a response to the consumer.

Requiring any additional information from a covered person while they are looking into a complaint or inquiry is likely to require the covered person to redirect resources away from its investigation into the complaint or inquiry and into a Department response. Only if a complaint has gone unresolved or an inquiry has gone unanswered for an unreasonably long period of time (perhaps 45 business days for a complaint and 30 business days for an inquiry) should a covered person be required to provide more detail to the Department regarding why the issue remains open.

Draft Rule 90008.6: Consumer requests for nonpublic or confidential information – Definitions.

- 27) The draft language of this ¶ requires anyone reading the draft rule to go to Financial Code Section 90008 to look up what subparagraph (D) of paragraph (2) of subsection (d) says. It would be far clearer and more user-friendly if this section led with what that statutory subparagraph says and clarified that the language of 90008(d)(2)(D) describes one circumstance in which a covered person is not required to respond to a consumer. We suggest the following revision: Notwithstanding Rule 90008.4, a covered person shall not be required to make available to a consumer confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors; information collected by the covered person for the purpose of preventing fraud or money laundering; information collected by the covered person for the purpose of detecting or making any report regarding other unlawful or potentially unlawful conduct; information required to be kept confidential by any other



provision of law; or nonpublic or confidential information, including confidential supervisory information. ~~For purposes of subsection (d)(2)(D) of Financial Code Section 90008~~

28)¶ (a) For clarity, we also recommend that the definition of “nonpublic or confidential information” be moved to its own subsection (b). Paragraphs (1) through (3) of subsection (a) speak to what nonpublic or confidential information *is*. It would be clearer to use a separate subsection to describe what nonpublic or confidential information *is not*. We also recommend that you add the word “legal” before the word authority in the definition for clarity, as follows: “(b) ‘Nonpublic or confidential information’ does not include information contained in records made publicly available by the Department or information that has otherwise been publicly disclosed by an employee or agent of the Department with the *legal* authority to do so.”

Further in this regard, we recommend that the regulation specifically provide that “nonpublic or confidential information” include the identity or identifying information pertaining to any employee or contactor of a covered person. We believe that such formation is protected by Article I, Section 1, of the California Constitution, and that this provision is good policy in any case.

* * *

CFSP reiterates our appreciation for the consideration of these comments by the Department.

Sincerely,



Thomas Leonard,
Executive Director
California Financial Service Providers

Enclosure: Sample Corporate Complaint Management Procedure

COMPANY, Inc., Customer Complaint Policy

It is COMPANY's policy to respond promptly and accurately to any complaint by a customer about any aspect of COMPANY's products or services or any matter in which the customer perceives that he or she has been mistreated by COMPANY's, provided that the person making the complaint identifies himself or herself. Upon receipt of a complaint by a customer, the circumstances underlying the complaint shall be investigated and a response shall be made to the customer based upon the results of the investigation. In the event that the response shall admit liability to the customer by COMPANY's, the response must be reviewed and signed by COMPANY's Chief Executive Officer.

The Compliance Manager shall be immediately notified of any customer complaint received by any COMPANY's officer, employee or director. If the complaint involves any action of a particular employee or employees, those persons shall not be involved in the investigation of the complaint or the response to the complaint. The Compliance Manager shall log each complaint received. If any complaint has not been responded to within 7 business days after it is received, the Compliance Manager shall investigate why a response has not been made and ensure that the investigation will be completed in a timely manner and, if applicable, a written response will be made as soon as possible.

Any written response to a customer must be approved by the Vice President of Operations before it is sent to the customer. In his or her absence, the Chief Executive Officer can approve the response. The Compliance Manager shall retain a copy of each written response and shall note in the log that a response has been made and what, if any, actions have been taken to correct the problem. In the case of multiple complaints regarding the same person or the same process, corrective action must be taken to ensure that the issue does not recur.

Written Complaints

Upon receipt of all written complaints, the document must be date-stamped. Within two business days of receiving the complaint, the Manager or Supervisor will send an acknowledgement letter (Exhibit "A") confirming receipt of the complaint and informing the customer that the investigation may take up to 15 business days.

When an investigation will take more than 15 business days to complete, the Manager or Supervisor will send a letter (Exhibit "B") informing the customer of this delay. After investigating the complaint, a written response is prepared by the appropriate officer and approved by the Vice President of Operations. If the response admits liability to the customer by the Association, the letter must be reviewed and signed by the Chief Executive Officer. The Compliance Manager will retain the original complaint, a copy of the approved response, and any other documentation or communication gathered in the investigation. A written response by an appropriate officer is required when COMPANY's receives a complaint in writing.

Verbal Complaints

If a complaint is received verbally, the employee receiving the complaint shall prepare a written memorandum of the details of the complaint. After investigation of the complaint, a written response is prepared by the appropriate officer and approved by the Vice President of Operations. If the response admits liability to the customer by COMPANY's, the letter must be reviewed and signed by the Chief Executive Officer. In this case, a verbal response may be made to the customer. When a verbal complaint is received and it appears that any action may be required by COMPANY's, the Manager or Supervisor will request that the customer send the Association his/her complaint or question in writing within 10 business days. After we hear from the customer, a written response will be returned addressing the customer's concerns as soon as possible. When an investigation will take more than 15 business days to complete, the customer will be informed of this delay. The Compliance Manager will retain the memorandum regarding the complaint, the original approved response, and any other documentation or communication gathered in the investigation.

Annual Report to the Board

The Compliance Manager will provide a written report annually to the Board of Directors regarding customer complaints received. This policy must be reviewed at least once in each calendar year and submitted to the Board of Directors for approval.

Complaint files and logs will be retained for five years.

EXHIBIT "A"

Date

Complainant's Name(s)
Complainant's Address

Re: (Identify the Complaint)

Dear (Mr. or Ms. _____)

Thank you for taking the time to contact COMPANY to explain the issues that have occurred recently. COMPANY is conducting an investigation, which may take up to 15 business days.

If you need further assistance, you may contact me at (insert phone number). Thank you for giving us the opportunity to assist you.

We value your patronage.

Sincerely,

(Manager or Supervisor's name)
(Manager or Supervisor's title)

cc: _____, Compliance Manager

Exhibit "B"

Date

Complainant's Name(s)

Complainant's Address

Re: (Identify the Complaint)

Dear (Mr. or Ms. _____)

This letter is to inform you that COMPANY is working diligently to address the issues that you have reported. Thank you for giving us the opportunity to assist you and a response will be provided to you upon completion of the investigation.

If you need further assistance, you may contact me at (insert phone number). We value your patronage.

Sincerely,

(Manager or Supervisor's name)

(Manager or Supervisor's title)

cc: _____, Compliance Manager