



September 17, 2021

Mr. Christopher S. Shultz
Acting Commissioner, Department of Financial Protection and Innovation
2101 Arena Blvd.
Sacramento, CA 95834
Submitted electronically to regulations@dfpi.ca.gov

Re: PRO-03-21

Dear Acting Commissioner Shultz,

Thank you for the opportunity to provide input on the proposed regulations addressing the obligations of covered persons with respect to consumer complaints and inquiries. This comment is joined by a broad group of consumer and small business organizations. In this letter, we first discuss the many strengths of the proposed regulations, tied to some of the reasons why consumer complaints are important. Then we respond to two of the questions posed by the DFPI and raise two other key substantive issues with respect to the proposed regulations. The remainder of the comment letter offers five additional recommendations of a more technical nature.

Our overall view is that these provisions will protect consumers with an accessible and timely complaint process that includes prevention and remedies for similarly situated people who have not complained; enhances the accountability of covered persons for the problems their consumers experience; encourages regular internal review of complaints and of internal company policies or relationships with third parties that might be leading to complaints; and

provides important information to the covered person and the DFPI through records retention and reporting. The proposed regulations will serve very well four of the primary reasons that consumer complaints matter.

First, consumer complaints matter because consumers need and deserve prompt resolution of problems that they encounter with financial products and services. The proposed regulation provides this in Section 90008.3, including through its provisions for notice to consumers of the complaint opportunity, multiple ways to file a complaint, including by phone to a live person and by using an authorized representative; a timely acknowledgement; a tracking number; an opportunity for status updates, and no-retaliation and nondiscrimination requirements.

For example, the requirement for a live customer service option to file a complaint will enhance inclusion for those consumers who lack access to or comfort with using digital means for anything to do with their finances. It will also serve those whose digital access is limited to a smaller screen device such as a phone which might present some challenges in the use of a web form. The proposed regulation will serve consumers with expedited resolution for financial hardship and should be strengthened with a recommended addition of several more ways to trigger expedited resolution. The proposed regulation recognizes the need for the complaint form to be available in multiple languages, although there is an issue with the drafting of that section.

The investigations rules of Section 90008.3(c) are valuable for individual consumers and for the second reason that complaints matter - because a small number of complaints can indicate a broader problem requiring forward-looking policy changes for prevention and backward-looking refunds or adjustments to provide remedies to similarly situated consumers. Further, the requirement in Section 90008.3(c) that the investigation include reviewing the allegations and supporting materials submitted by the complainant; and that this be done by the staff of the covered person who are responsible for those services or operations complained about means that the complaint process will bring problems promptly to the attention of those who administer the products and services that are the source of the complaints.

The requirements on preventative policy changes in Section 90008.3(c)(1)(B)-(C) are crucial. They will help to ensure that other consumers will be protected in the future because the covered person must ascertain the cause of the issue and take steps to prevent recurrence, including appropriate policy changes and employee training.

We also strongly commend the DFPI for including the requirements in Section 90008.3(c)(3) that an officer of the covered person must review the operation of the complaint process to identify any emerging patterns of complaints, take steps to prevent recurrence, and give appropriate remedies to consumers that experience similar issues. These requirements will

enhance accountability for covered persons to internally police, and where necessary correct, their own conduct as complaints reveal problem areas.

The requirement to give appropriate remedies to similarly situated consumers is very important. Not all consumers will have the sophistication to file a complaint, or even to know that a problem that they experienced could be the subject of a complaint. People who lack the confidence, time or knowledge to file a complaint need consumer remedies just as much, if not more, than those who do complain. The prevention and the appropriate remedies subsections both will serve those who might otherwise lose the benefits of the complaints process because they do not feel ready to use it.

The carefully structured subsections 90008.3(c)(2) and (c)(3)(B) on complaints regarding the conduct of third parties are also very important. Third parties such as service providers and lead generators may have economic incentives to satisfy the covered person, not the consumer. The requirements in 90008.3(c)(3)(B) with respect to third parties will provide a counterweight to that economic incentive. The proposed regulation should support better third party practices and service to consumers by requiring that the responsible officer of the covered person review complaints about the conduct of third parties and determine whether the covered person's own standards for vetting and monitoring were met or need revision, and whether the covered person should continue the business relationship with the third party. This should lead to better oversight by covered persons of what third parties are doing on their behalf; and perhaps also more care on the part of those third parties who may now anticipate closer scrutiny of their acts and omissions by their own customer, the covered person.

Covered person oversight of third parties matters because consumers do not choose, and cannot fire, many of the types of third parties selected by their covered person. The CFPB has recognized the need for effective oversight of these relationships. Press Release, *CFPB to Hold Financial Institutions and their Service Providers Accountable*, (April 13, 2012), available at <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-to-hold-financial-institutions-and-their-service-providers-accountable/>, and CFPB Bulletin 2013-03, available at https://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf.

A third reason that consumer complaints matter is that complaint information can provide covered persons and the regulator with business intelligence to identify and stem emerging problems. The requirement that an officer of the covered person perform a substantive monthly review for trends, prevention and needed remedies in Section 90008.3(c)(3) will build accountability. The requirements for internal monthly review and quarterly reporting have the depth of information, such as both product type and complaint topic, necessary to document and learn from the customer experience.

The record retention and reporting requirements in Section 90008.3(f) and (h) will provide value to the covered persons and to the DFPI. The records and reports will show how the covered person treated consumers. They may provide evidence of how consumers used or understood the product, and other valuable information for supervisory oversight and enforcement. The strong record retention and reporting requirements may also provide covered persons with an incentive to build a culture of compliance. Making those reports public should contribute to accountability. These requirements should give covered persons a reason to look for and act upon patterns in their own records before their regulator does so.

The tracking and reporting of inquiries by type in Section 90008.4 should have a similar informational value to the covered person and the DFPI; with a recommendation for one additional category of inquiry and of complaint type (Issue 8 below). We also support the obligations on covered persons in Section 90008.5 for complaints from the DFPI; and recommend some further incorporation of portions of 90008.3 into Section 90008.5 (Issue 7 below). We offer no comments on Section 90008.6.

Fourth, consumer complaints can support competition. The wholly appropriate requirements in these proposed regulations to intake, investigate, resolve, analyze, prevent problems, remediate across similar consumers, retain records and make reports will support healthy competition. Covered persons make business decisions about how much to invest in customer service and in regulatory compliance. Companies whose consumers are generally satisfied will have fewer complaints to address; while their competitors whose practices or products generate more complaints will have to take those complaints seriously, change policies, and remediate across their customer base. This should substantially reduce any competitive advantage from underinvesting in customer service and in compliance.

The undersigned small business groups join with consumer and low income organizations in welcoming the strong provisions of the proposed regulations and join in the recommendations to further strengthen the proposal. Unresolved consumer financial services problems can spill over to affect an individual's credit standing, and that in turn can affect the ability to borrow to support a small business enterprise.

Consistent with our strong support of these proposed regulations, we offer comment on two questions posed by the DFPI and two other significant issues where amendment is needed to ensure that the provision delivers value for consumers (Issues 1-4). After those four key issues, we offer briefer observations and recommendations on five other topics that are more technical in nature (Issues 5-9).

Summary of Recommendations

Our overarching recommendation is to keep this set of proposed regulations intact, except as noted below, where some changes will further enhance them.

Summary of key substantive recommendations for changes:

Issue 1. The regulation should expressly make all complaint responsibilities non-delegable. This will facilitate accountability-building information at the covered person about the real problems that their consumers are reporting through complaints. It should maximize the effect of the complaint process on longer term changes, where needed, in the covered person's practices. If the DFPI disagrees with this recommendation then any delegation should be limited to complaint intake, status updates, and generating automated correspondence. However, even these functions may reduce covered persons' insights, add confusion and raise identity theft risks for consumers, and require additional detail in the proposed regulations.

Issue 2. Expedited resolution should be triggered three ways. First, as currently proposed, when "the complainant claims financial hardship." Second, when the consumer claims that an opportunity or benefit will be lost without prompt resolution of the complaint – in essence, when the unresolved nature of the complaint itself creates a hardship by blocking something else. Third, there should be a list of categories that trigger expedited resolution even when the consumer does not have the sophistication to make a claim of financial hardship or of impending lost opportunity. The categories should include complaints involving access to funds, funds missing from an account, or an error in a funds transaction; complaints where a levy, garnishment, or offset is being made or has been made, complaints when the consumer faces any stage of auto repossession, and complaints of any borrower in or seeking forbearance or modification, or where foreclosure has been initiated. The expedited timeframe is also not yet cross referenced to the time required for a response to a complaint sent from the DFPI, as discussed below in Issue 7.

Issue 3. The language access requirement should be recast. It now is tied to the language of the original contract, but contracts negotiated in other languages are routinely signed in English, with Civil Code Section 1632 requiring a translation along with the English language contract. We recommend requiring that the complaint process be supported in English and in each of the five languages that the Legislature has already recognized in Civil Code Section 1632. Those languages are Spanish, Chinese, Tagalog, Vietnamese, and Korean.

Issue 4. The text for the requirement for covered persons to notify consumers in written communications that they may complain to the DFPI should be revised to avoid an implication that complaint to the DFPI is only available after a complaint to the covered person.

Summary of technical observations and recommendations:

Issue 5. The regulation should expressly prohibit requests on the complaint form or elsewhere in the complaint process for personal or financial information not required by the regulation and not necessary to investigating and resolving the complaint. Asking for unneeded PII or financial information on the form or in the process could deter complaints.

Issue 6. The regulation should require that a complaint cannot be rejected as incomplete if the consumer is reasonably identifiable from the information provided and the missing information is available in the covered person's records.

Issue 7. The cross reference between Section 90008.5 and 90008.3 should be updated so that covered person's obligations when handling complaints forwarded from the DFPI will include the expedited time period where applicable, the no-retaliation and non-discrimination obligations, and records retention.

Issue 8. The inquiry and complaint categories should include a category for inquiries about how to obtain or qualify for a product or service and a complaint category for denial of access to a product or service. This information may give insight into fair lending issues.

Issue 9. The DFPI may wish to consider whether it wants to require aggregate reporting by covered persons about the complaints that the DFPI provides to the covered person. This might require an addition to Section 90008.5 to mirror Section 90008.3(h).

Discussion of issues and recommendations

Issue 1: The regulation should expressly make all complaint responsibilities non-delegable.

The DFPI asked for comment on "whether a covered person should be allowed to delegate the handling of complaints." We respectfully recommend that all complaint responsibilities should be made expressly non-delegable. We appreciate that the proposed regulation has nondelegability for review and evaluation of complaints in Section 90008.3(c)(1). The text of (c)(2) implies nondelegability by stating that the covered person must do its own investigation, and the text of (c)(3) implies nondelegability by assigning the obligation to an officer of the covered person to review for emerging patterns, remediate for similarly situated persons, and take prevention steps. Making it clear that all parts of the complaint process are nondelegable would avoid a later dispute about these obligations.

Delegation of complaint handling would distance the covered person from the real time information that complaints offer. This could undermine some of the value of the well-crafted

obligations in the regulation for the covered person to not only respond to individual consumers but also to spot trends, adjust policies to prevent emerging problems, and provide remedies for consumers who have not complained but are similarly situated. Allowing delegation of parts of the complaint process might support a convenient blindness about problem areas. It is also hard to see how an outside complaint handling service would “ascertain the cause of the issue” as required in the proposed regulations.

If the DFPI disagrees with this recommendation against delegation, it should limit any delegation to complaint intake, status updates, and automated correspondence. However, even this limited delegation would: 1) somewhat undermine how complaints inform the covered person; 2) create some challenges and bumps in the process for consumers, including identity theft risk; and 3) create a need for specific new regulatory provisions on the quality of the delegated service, such as quality statistics on complaint intake.

First, delegating complaint intake is likely to create some additional delay before the covered person becomes aware of a spike in complaints about a particular product, feature or practice. The covered person might only learn of a spike in complaints during the mandated monthly review. Informal channels of information that can develop when employees of the covered person talk to one another would be lost.

Another concern about delegation of complaint intake is potential consumer deterrence or confusion. If complaints are taken on a different website than that of the covered person, people may be hesitant to use it because of doubts about whether it is a real site or a fake one set up to harvest identity and financial information. Consumers are regularly warned not to use websites offered by entities with whom they have not done business before. A person receiving a notice to obtain an update from an unfamiliar site could be similarly hesitant, and there will be a risk of fake emails offering “updates on your claim” to a similarly named site that requires personal information at login.

Delegation of complaint intake would also create a disconnect between complaints and inquiries. Consumers with an inquiry need to speak with a representative at the covered person who has immediate access to the records and who can respond to follow-up inquiries in the same conversation. This highlights two problems that could stem from delegating complaint intake. First, a consumer may wish to start with an inquiry to the covered person, and only decide to complain if the answer to the inquiry is unsatisfactory, incomplete, or reveals something unexpected about the transaction or account. That consumer will already be on the phone with the covered person, and may experience confusion, delay, and inconvenience if told that they have to go elsewhere, outside the covered person, to file a complaint.

Second, if inquiring consumers are orally given a web address to complain, fraudsters may create fake sites mimicking the complaint intake web addresses for larger covered persons in order to capture the identities and financial information of consumers who mistype the address given. According to the FBI's Internet Crime Complaint Center, California already ranks first in the nation for number of identity theft complaints and the amount lost, \$621 million in the 2020 report. FBI Internet Crime Complaint Center, *Internet Crime Report 2020*, pp. 23-24, available at [2020 IC3Report.pdf](#). Unfortunately, fake customer service phone lines have already been reported. Catherine Park, *BBB: Cash App users scammed out of thousands of dollars after calling fake customer service number*, Fox 5 Atlanta (Sept. 22, 2020), available at <https://www.fox5atlanta.com/news/bbb-cash-app-users-scammed-out-of-thousandsof-dollars-after-calling-fake-customer-service-number>.

Third, if the DFPI permits delegation of intake it would have to add requirements to the regulation to ensure: 1) adequate customer service; 2) no cross-marketing to complainants by the third party; 3) no sale, exchange, or transmission by third party of any data obtained in the complaint process to anyone but the covered person; and 4) obligations on the covered person to contractually require and monitor information security at the intaking entity. Customer service requirements could include the covered person setting and monitoring quality statistics such as caller busy signal rates, peak and average hold times and dropped call rates for phone service. For web intake, time on web form and web form abandonment rates would be among the quality statistics.

Without customer service quality monitoring, contracts that set a low price per consumer complaint might lead to lower quality customer service for complaining consumers. Contracts for flat rate handling of all of the covered person's complaints could present a different problem – that the entity intaking complaints would have no incentive to make it easy to complain, and perhaps even an incentive to discourage complaints. There are known web form design practices that can encourage, or discourage, completion of a web form. See blog post, Benjamin Elias, *How to Make a Good Form (Make Sure Your Forms Don't Scare Anyone Away* (Dec. 18, 2019) available at <https://www.activecampaign.com/blog/how-to-make-a-good-form>.

Issue 1 Recommendation: We respectfully recommend adding to Sections 90008.3, 90008.4 and 90008.5:

The obligations of the covered person under this Section may not be delegated.

Issue 2. Expedited resolution should apply to claims of financial hardship, claims of impending loss of a benefit or opportunity, and certain categories of complaints.

The DFPI asked commenters to explain “the circumstances under which a covered person should be required to expedite its review of, and response to, a complaint.” Expedited resolution should be required for all complaints where, as currently proposed, “the complainant claims financial hardship.” However, this valuable and flexible standard should be augmented in two ways. First, expedited treatment should also be triggered by a claim that an opportunity or benefit will be lost without prompt resolution of the complaint – that is, if the unresolved nature of the complaint itself creates a hardship. This could occur when a school withholds a transcript needed to get a job while collecting a claimed debt. It could occur when the account status under dispute with a creditor is depressing the consumer’s credit score at a time when the consumer is seeking a loan, job or promotion.

Second, the hardship standard should be augmented with a list of categories that should trigger expedited resolution whether or not the consumer has the sophistication to make a claim of financial hardship or of impending lost opportunity. The categories should include complaints involving access to funds, funds missing from an account, or an error in a funds transaction; complaints where a levy, garnishment, or offset is being made or has been made; complaints when the consumer faces any stage of auto repossession; and complaints of any borrower in or seeking forbearance or modification, or in the foreclosure process.

Some of these categories, such as inability to access deposited funds, missing funds, error in a funds transaction, offset, levy or garnishment are obvious sources of financial difficulty, as they mean a loss of funds to meet current family expenses. An interruption in funds can lead to a cascade of late fees on unpaid bills and other adverse consequences, including eviction. In cases of levy or garnishment, the loss of funds can be the first time consumers have learned about a judgment. This problem was discussed at the first meeting of the DFPI’s Debt Collection Advisory Committee. Comments by Elizabeth Gonzalez, *Debt Collector Advisory Board Zoom Recording*, at 43:54 (July 28, 2021), available at <https://dfpi.ca.gov/debt-collection-advisory-committee/>. Repossession, forbearance, modification and foreclosure also are times of financial stress, so should trigger expedited resolution when these regulations apply. Automobile repossession, for example, can be very hard to undo once it has occurred. The car cannot be restored to the consumer once it has been sold, and the inherent uncertainty in buying a used car may mean that a replacement purchased after a refund might not be reliable enough to meet the consumer’s essential needs for transportation to work, school, or medical care.

Adding specific categories that automatically trigger expedited review will provide some additional protection to at least three segments of consumers. Categories will benefit people who do not know that they can get a complaint resolved more quickly if they describe the financial hardship that they are experiencing. Categories will benefit consumers who are

cautious about giving any more information about their financial circumstances than required on the complaint form. Categories will also help consumers who may feel stress or shame about financial hardship and so do not describe it in the complaint. In a nationally representative sample taken even before the economic disruptions of Covid-19, people were asked to rate the accuracy of the statement that “thinking about my personal finances can make me feel anxious.” Overall, 53% rated this 5 or higher on a 7 point scale. The responses showed a broader level of reported anxiety among Hispanics at 59%, and the highest reported level of anxiety was by households with financially dependent children, at 61%. FINRA Investor Education Foundation, *The State of U.S. Financial Capability: The 2018 National Financial Capability Study* (2019), pp. 8-9, available at https://www.usfinancialcapability.org/downloads/NFCS_2018_Report_Natl_Findings.pdf.

This same study showed that more than half of U.S. families are living paycheck to paycheck, or face even more financial fragility. Fully 55% reported that they spend all, or more than all, of their income. *2018 National Financial Capability Study*, p. 6.

It is important that the use of categories to trigger expedited resolution be paired with retaining the current “claim of financial hardship” standard, preferably augmented to read “claim of financial hardship or claim of impending loss of a benefit or opportunity.” The flexibility of the standard already in the text of the proposed regulation will serve the wide variety of individual circumstances and help to offset the risk that categories could become incomplete over time as practices change and new types of financial products, services, and problems arise.

A prior comment letter filed in PR-01-21 by *Consumer Reports* addressed consumer complaints and recommended a time to resolution of 3 to 5 business days; much shorter than the 15 calendar days in the proposed regulation. However, if expedited resolution is easier to obtain, it will substantially mitigate the potential for hardship from the 15 day period.

Issue 2 Recommendation: While we strongly support the use of an expedited resolution timeframe, we recommend these additions to Section 90008.3(e)(1)(B):

- (i) For any complainant who claims financial hardship, or claims impending loss of a benefit or opportunity, either orally or in writing, the covered person shall, on an expedited basis, respond with a final decision on all issues within seven (7) calendar days of receiving the complaint.
- (ii) Whether or not (i) is met, the covered person shall, on an expedited basis, respond with a final decision on all issues within seven (7) calendar days of receiving the complaint if the complaint concerns one of these categories, or if the consumer’s account or transaction with the covered person currently involves any of these categories:

- a. The complaint involves access to funds, funds missing from an account, or an error in a funds transaction to or from an account.
- b. A levy, garnishment, or offset is being made or has been made.
- c. The covered person is or has engaged in any stage of auto repossession.
- d. The consumer is seeking or is in forbearance or modification.
- e. Any step in foreclosure has been initiated.

Issue 3: Non-English language access to the complaint process is valuable but the text needs revision.

The language access concept for the complaint process in Section 90008.3(a)(5) is valuable but the text requires revision because it is tied to the language of the contract. There are a few problems with this approach. Some types of covered persons, such as debt collectors, will not have contracts with the consumer. Other types of covered persons may not have a record of the language in which the underlying contract giving rise to the product, service, account or debt was negotiated. Further, the covered person's records may not show the need for language access when the consumer used their own interpreter in negotiating an in-person contract, or when deciding to agree to a web contract.

The current trigger on language access tied to the language of the contract with the covered person may not apply to any form contracts. Even when a contract is negotiated in another language, California Civil Code Section 1632 permits the actual contract to still be in English, with a translation of the contract provided before execution. One way to address this disconnect would be to tie the requirement to the language in which the contract from which the financial product, service, or debt arose was negotiated. However, we believe it would provide more simplicity and certainty for consumers and for covered persons to simply define the languages in which the complaint process must be offered as English plus the five languages which have long been recognized in California Civil Code Section 1632. Those languages are Spanish, Chinese, Tagalog, Vietnamese, and Korean. The proposed regulation should also retain the text that permits a wider array of languages at the discretion of the covered person.

Issue 3 Recommendation: While strongly supporting a language access requirement, we recommend that Section 90008.3(a)(5) be amended to read:

The covered person shall make the complaint process available to the complainant in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean, and, if supported by the covered person, another language which is the complainant's preferred language.

Issue 4: The wording of the requirement that covered persons notify consumers of how to complain to the DFPI should be clarified.

We strongly support the concept reflected in Section 90008.3(a)(2) that covered persons notify consumers in all written communications about how to complain. However, we recommend a clarification in the text of the notice to more clearly indicate to consumers that they have a choice about when to complain to the DFPI. There is an apparent inconsistency between the clear obligation set forth in Section 90008.5 that covered persons respond to all complaints forwarded from the DFPI and the language of the notice to the consumer in Section 90008.3(a)(2), which informs consumers that they “may submit to the Department any complaint not resolved to their satisfaction....” This could imply to consumers that they must complain to the covered person before submitting a complaint to the DFPI.

In most cases, consumers will have tried, via inquiry or complaint, to resolve their concern before filing a complaint. But it is important to avoid any implication that they must do so. A consumer who feels they are experiencing harassment by a covered person may not want to contact the company. A consumer may have become discouraged at the inquiry stage or may have been unable to get through to a person at the company.

Issue 4 Recommendations:

At Section 90008.3(a)(2) Add: “a complaint at any time, including” before “any complaint not resolved to their satisfaction....”

The DFPI may also wish to look at 90008.3(a)(3) if it intended for the website notice to include both how to complain to the covered person and how to complain to the DFPI. It is not clear that the website notice covers both as currently drafted.

Part Two: Technical recommendations

Issue 5. Prohibit requests for unnecessary personal identifying information or unnecessary financial information on the complaint form and in the complaint process.

The regulation should prohibit a covered person from requesting any unnecessary personal identifying information (PII) or financial information on its complaint form or in its complaint process. The proposed regulation already contains a well-crafted list of the information that must be in the complaint. Section 90008.3(a)(1)(A)-(G). It requires name and contact info, and quite appropriately avoids information that the consumer might not have on hand, such as account number. It also properly avoids more intrusive questions that might make people hesitant to complain. Consumers may not wish to give a covered person with whom they already have a problem or dispute any extra personal or financial information. The potential that a request for too much information could deter a complaint is more evident when thinking

about a covered person such as a debt collector asking for information extraneous to the complaint, such as the consumer's bank account information.

The proposed regulation states the minimum fields for the covered person's complaint form, and does not address what else can be requested. This technical change will prevent deterrence from overinclusive requests for unnecessary PII or financial information.

Issue 5 Recommendation: Section 90008.3(a)(1) should be amended to add:

(H) The covered person may not request additional personal identifying information beyond what is described in (B) - (E) and may not request financial information unrelated to the specific complaint of the consumer. This obligation continues throughout the complaint process.

Issue 6. The regulation should be augmented to require that a complaint cannot be rejected as incomplete if the consumer is reasonably identifiable from the information provided and the missing information is available in the records of the covered person.

Consumers will vary widely in their abilities to fill out forms and in what documents they have retained from the covered person about the transaction. People who have difficulty with forms may also have a high need to get a problem resolved. The regulation leaves it to each covered person to decide how its complaint form will look, be presented on a website, and the readability level. As noted above in connection with delegation, some web design principles encourage completing a web form, while others can discourage completion.

The complaint must be complete enough to allow the covered person to reasonably identify the consumer. Beyond that, the covered person should be prohibited from rejecting a complaint as incomplete if the missing information is available in the covered person's customer records. This should reduce any incentive to deter complaints through form design.

Issue 6 Recommendations:

At Section 90008.3(a), Add: (7) The covered person may not treat a complaint as incomplete if the consumer is reasonably identifiable from the information provided and the missing information is available in the covered person's customer records.

To further address form design and other customer service issues in consumer complaint intake, the DFPI might also want to consider requiring reporting of time on web form and web form abandonment rates, perhaps starting after the systems have been up and running for the first six months, to allow for glitches to be worked out. For complaint phone

lines, the relevant statistics would include busy signal rate, peak and average hold time, and dropped call rate. A high dropped call rate can disguise a long wait time, since dropped calls occur when people give up and hang up before the call is answered.

Issue 7: The covered person's obligations in handling complaints forwarded from the DFPI should be expanded to include the expedited time period, the no-retaliation and non-discrimination obligations, and records retention.

Section 90008.5(b)(2) requires written procedures to respond to complaints sent by the DFPI "using the procedures set forth in Rule 90008.3(c)." However, the expedited time period for claims of financial hardship is found in 90008.3(e)(1)(B), so is not included in the cross reference. Similarly, the no-retaliation, records retention, and non-discrimination provisions are in subsections 90008.3(e)(3), (f) and (g) so they not yet included by cross reference in Section 90008.5.

Expedited resolution can be just as important for a complaint that comes in through the DFPI rather than directly to the covered person. It is basic fairness that complaining to the regulator should not lead to adverse action against the complainant and that there be no discrimination in the complaint process. Covered persons' handling of complaints forwarded by the CFPB during certain years has raised concerns about discrimination. See Andrea Requier, *Black Americans suffered the most under Trump-era consumer-protection agency, study finds*, MarketWatch (February 1, 2021), available at <https://www.marketwatch.com/story/black-americans-suffered-the-most-under-trump-era-consumer-protection-agency-study-finds-11610731211>; and blog post, Acting CFPB Director David Uejio, *Consumers and their Experiences to be at the Foundation of CFPB Policymaking*, CFPB (February 10, 2021), available at <https://www.consumerfinance.gov/about-us/blog/consumers-and-their-experiences-to-be-at-the-foundation-of-cfpb-policymaking/>.

Finally, section 90008.5 cross references the records retention requirement of 90008.3(f) with respect to what must be provided to the DFPI if the complaint was previously received by the covered person. But it does not adopt or cross reference records retention requirements if the complaint is coming first from the DFPI.

Issue 7 Recommendations:

Add to Section 90008.5(b)(2): "and subject to the obligations in 90008.3(e)(1)(B), (e)(3), (f), and (g)."

The DFPI also may wish to consider whether there are any other obligations in Section 90008.3 outside of subsection (c) which should also be incorporated by cross reference into

section 90008.5 on complaints sent by the DFPI. For example, the requirement to track and respond to requests of the complainant for status updates in 90008.3(d) would seem necessary, unless with respect to updates the DFPI plans to provide updates to complainants.

Issue 8: The inquiry and complaint categories would be strengthened by adding another category: inquiries about how to obtain or qualify for a product or service, and complaints about denial of access to a product or service. This will help to flag information that might be relevant to fair lending.

Issue 8 Recommendations:

At Section 90008.3(h)(12) Add: (N) Complaints about denial of access to a product or service.

At Section 90008.4(c) Add: “(5) Questions regarding how to obtain or qualify for the product or service.”

Issue 9: The DFPI may wish to consider whether it wants to require aggregate reporting by covered persons about the complaints that the DFPI provides to the covered person.

The reporting section in 90008.3(h) is in the part of the regulation which addresses the process for complaints received by the covered person directly from the public, so it is not entirely clear whether that report includes aggregate information about complaints forwarded by the DFPI. There is value in having one report that covers only complaints made directly to the covered person, as that will give insight about the efficacy and responsiveness of the covered person’s process. In addition, Section 90008.5 already requires reporting back to the DFPI on each complaint it forwards. However, if the DFPI wants to obtain aggregate reporting from covered persons about the complaints that it forwards, this might have to be added as a separate subsection of 90008.5. Such a report would make the aggregate information readily available to the covered person’s own leadership, and to the DFPI as input to its supervisory process, without the DFPI having to do a separate data analysis of the complaint-by-complaint records it retains. The format and contents of the report under Section 90008.5 could mirror the report under Section 90008.3(h).

Issue 9 Recommendation: The DFPI may wish to require a separate aggregate report by covered persons about complaints received by the covered person under Section 90008.5.

Conclusion

We are pleased to offer strong support for this comprehensive and well-crafted set of proposed regulations, and to suggest certain policy and technical amendments to enhance them. These proposed regulations will give clear guidance to covered persons by requiring a specific process to review and resolve consumer complaints in a timely and thorough manner, with good documentation of the investigations and dispositions. The consumer will have multiple ways to lodge a complaint, a place to call for status and get a reason for any denial. The covered person can choose to streamline its process by giving a full and prompt refund, but it still must take the information in those complaints into account to determine trends, prevention, remediation and in its third party vetting and monitoring practices. The proposed regulations have multiple important features to create an environment for consumer complaints to result in covered persons identifying, rectifying, and preventing recurrence of problems that apply to similar consumers, including providing remedies for those who do not complain. The proposed regulations appropriately require the covered person to determine if a policy change or employee training is needed. The document retention and reporting requirements of the proposed regulation will provide rich information to both the covered person and to the DFPI. This information can inform the DFPI as it allocates regulatory, oversight, and enforcement resources.

We recommend the changes described in this comment letter to further strengthen the proposed regulations. If any further information would be useful, please contact Gail Hillebrand at [REDACTED] or Elizabeth Gonzalez at [REDACTED], [REDACTED].

Very truly yours,

[REDACTED]

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