



Consumer Data Industry Association
1090 Vermont Ave., NW, Suite 200
Washington, D.C. 20005-4905

P [REDACTED]

Writer's direct dial: [REDACTED]

CDIAONLINE.ORG

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Via Electronic Delivery to regulations@dfpi.ca.gov

File No: PRO 03-21

Cc: [REDACTED]@dfpi.ca.gov

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

RE: Invitation for Comments on Proposed Rulemaking under the California Consumer Financial Protection Law: Consumer Complaints (PRO 03-21)

Dear Mr. Bae:

The Consumer Data Industry Association (“CDIA”) submits this comment letter in response to the invitation by the California Department of Financial Protection and Innovation (“DFPI”) on the draft Complaints Regulations under the California Consumer Financial Protection Law (“CCFPL”). Adoption of our suggestion would protect consumers and enhance the California credit economy.

The Consumer Data Industry Association is the voice of the consumer reporting industry, representing consumer reporting agencies, including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals and to help businesses, governments, and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity all over the world, helping ensure fair and safe transactions for consumers, facilitating competition, and expanding consumers’ access to financial and other products suited to their unique needs.

Our consumer reporting agency members have been complying with laws and regulations governing the consumer reporting industry for decades, including the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681 *et seq.* The FCRA is more than just the nation’s first federal consumer privacy law; it is a substantial body of consumer rights and industry obligations. The FCRA governs the collection, assembly, and use of consumer report information. The statute, the rules promulgated thereunder, and the data flows regulated

by the Act undergird the U.S. credit reporting system. In particular, the FCRA outlines many consumer rights with respect to the use and accuracy of the information contained in consumer reports, including the right to requests disclosures of consumers' files. In California, members are subject to the California Consumer Credit Reporting Agencies Act ("CCRAA"), which also provides consumers with rights to access their personal information maintained by consumer credit reporting agencies ("CCRAs").

CDIA members have been at the forefront of consumer privacy protection. Fair, accurate, and permissioned use of consumer information is necessary for any CDIA member client to do business effectively.

CDIA is greatly encouraged by the exemption in draft Rule 90008.1 for consumer reporting agencies because it will permit consumers to be given fair and equitable dispute rights. However, we are concerned that the exemption does not apply to draft Rule 90008.6, which relates to Cal. Fin. Code § 90008(d)(2)(D), and that draft Rule 90008.6 does not otherwise clarify the statutory section's exemptions for CRAs.

Cal. Fin. Code § 90008(d) imposes requirements on covered persons relating to requests for information in the control or possession of that covered person concerning the consumer financial product or service that the consumer obtained from the covered person. That section provides for exemptions for some CRAs, but does so in a confusing manner. CDIA believes that the Complaint Regulations present the DFPI with an opportunity to clarify these exemptions.

Section 90008(d)(1) requires covered persons to comply with a consumer request for information in the control or possession of that covered person. Because CRAs are already subject to disclosure requests under the FCRA and the CCRAA, § 90008(d)(2)(E) exempts from this DFPI disclosure requirement information subject to the FCRA, "but only to the extent" that "subdivision (b)" is inconsistent with the FCRA. This carveout is confusing, both because we believe that the references to "subdivision (b)" may be a scrivener's error and because it is not clear what information the DFPI might expect CRAs to disclose that are not already subject to disclosure under the FCRA and CCRAA.

Regarding the latter, the FCRA requires CRAs to disclose to consumers all information in the consumer's file as well as the sources of that information, a list of third parties that recently received a consumer's report, and other specified information. 15 U.S.C. § 1681g(a). It is not clear what "information in the control or possession" of a CRA the DFPI could require CRAs to disclose to consumers upon request that CRAs are not already required to disclose pursuant to the FCRA. Thus, the language creates regulatory uncertainty without any clear consumer benefit.

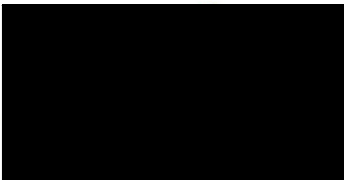
Statutory section 90008 also provides an exception for CCRAAs, in subdivision (d)(3), without the confusing “only to the extent” limitation. However, not all CRAs that could be subject to the CCFPL are CCRAAs, so this provision extends the regulatory uncertainty. For example, “nationwide specialty consumer reporting agencies,” a defined subset of CRAs under the FCRA, may not be CCRAAs in California (because they compile non-credit information) but could be subject to the CCFPL (because the information is used in connection with consumer financial products or services).

CDIA believes that because the draft Complaint Regulations provide the DFPI’s interpretation of § 90008(d) in the form of definitions, the DFPI has the opportunity to clarify its view on how § 90008(d) should not apply to CRAs. CDIA urges the DFPI to consider adopting a rule clearly stating that it does not consider CRAs subject to the requirements of § 90008(d).

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Thank you for the opportunity to share the views and concerns of the consumer reporting industry as part of the DFPI’s rulemaking efforts. Please contact us if you have any questions or need further information based on our comments.

Sincerely,



Eric J. Ellman
Senior Vice President, Public Policy & Legal Affairs