

**September 17, 2021**

Commissioner of Financial Protection and Innovation  
Attn: Sandra Sandoval, Regulations Coordinator  
300 South Spring Street, Suite 15513  
Los Angeles, CA 90013

Via Electronic Mail to: [regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov)  
cc: [REDACTED]@dfpi.ca.gov

**Re: Comments on Proposed Rulemaking under the California Consumer Financial Protection Law: Consumer Complaints (PRO 03–21)**

Dear Ms. Sandoval,

On behalf of the Electronic Transactions Association (“ETA”), the leading trade association for the payments industry, we appreciate the opportunity to provide comments on the Department of Financial Protection and Innovation’s (“DFPI”) proposed rulemaking under the California Consumer Financial Protection Law (“CCFPL”) related to consumer complaints. In these comments, we have outlined areas we believe would be improved if DFPI justified and clarified definitions, as well as areas we believe should be changed to make the regulations more workable for industry. Additionally, ETA has outlined sections of the draft rule that we believe are unduly burdensome to industry and that would disadvantage market participants attempting to scale new consumer products and could serve as a potential barrier to market entry.

**Rule 90008.2: Definitions.**

- **Broad Definition of “Complaint”**

The definition of “complaint” should be more clearly defined as the current definition, “any expression of dissatisfaction”, is too broad and may require subjective judgment. The definition should have an element of materiality or should be defined as a complainant claiming a financial impact or damages. Otherwise, the burden on companies will be overwhelming, particularly with regard to developing policies and procedures that are aimed at appropriately identifying and resolving such “complaints”.

- **Proposed Modified Definition of “Covered Person” Responsible for Complaints Program**

Given that the definition of “covered person” in Section 90005(f) of the Financial Code includes affiliate and third-party service providers of any person engaging in the offering or providing of a consumer financial product or service to California residents, the DFPI should clarify that the responsibility to develop the consumer complaint program (*i.e.*, policies and procedures) lies with the party offering the consumer financial product or service, and not any of its service providers (unless directed by the principal, *i.e.*, the party offering the financial product or service), as service providers should only take direction from the principal, which would enable the principal to maintain control over its communications with consumers and its handling of consumer complaints. Implementing such proposed modified definition of “covered person” would drive all “complaints” and “inquiries” to the principal party offering the consumer financial product or service, and only to its service providers where specifically designated by the principal.

**Rule 90008.3: Complaint Processes and Procedures.**

In general, DFPI should reconsider the timelines required for the acknowledgment of complaints and final decisions. The outlined timeframe is a shorter period than the CFPB requires of its supervised

entities, and it will likely lead to higher headcount needs and resourcing costs and would disadvantage market participants attempting to scale new consumer products.

Moreover, DFPI should make clear that complaints received by a covered entity that pertain to unrelated lines of business, or that fall outside the scope of this rulemaking, are not subject to the requirements of the proposed rule.

Additionally, ETA believes that all of deadlines should be amended to from “calendar days” to “business days”.

- **90008.3(a)(1)** – Given that many covered entities also engage in other lines of business unrelated to financial services, DFPI should clarify that the requirement that a paper complaint form be at the physical locations of covered entities applies only to physical locations where financial services are provided.
- **90008.3(a)(3)** – Requiring the link to the complaint form on the main of a covered person’s website is overly burdensome and will likely confuse consumers in need of assistance. Given that consumers are accustomed to visiting the “contact us” page for this information, it makes more sense to have the link to the complaint form in this location.

Moreover, DFPI should provide additional clarity as to whether a complainant has to fill out this form, or how the form is completed when a complainant makes a complaint via phone or otherwise.

- **90008.3(a)(4)** – The proposed rule would likely result in dual processes to serve California residents. As drafted, the proposed rule requires covered persons to maintain a toll-free telephone number that consumers can use to file complaints orally with a live representative “during regular business hours.” At the same time, California’s legislature recently passed A.B. 1320, which will require money transmission licensees to operate a telephone line for “at least 10 hours per day, Monday through Friday, excluding federal holidays.” These dual requirements for licensed and unlicensed products could cause unnecessary complexity, or, more likely, force compliance with A.B. 1320’s requirements for all products. Therefore, ETA believes that these requirements be clarified, or be removed altogether, to ensure that the rule does not create unreasonable compliance burdens for new market entrants.
- **90008.3(a)(6)** – The proposed rule prevents covered persons from defining a time limit for the complainant to file a complaint. For the same policy reasons why legal statutes of limitations exist and why federal consumer laws and regulations, such as the Electronic Fund Transfer Act and Regulation E, etc., impose deadlines for consumers to raise complaints about errors and other issues with their financial institutions, the proposed rule should prescribe an appropriate time period, *e.g.*, 90 days from the date the facts underlying a complaint arose, within which a complainant may file a complaint for purposes of enforcement of Rule 90008 and its subdivisions. Providing a reasonable deadline for complainants to file complaints will provide covered persons with more business certainty as to their compliance obligations, such as record-keeping obligations (*e.g.*, the possibility of a no-time-limit complaint period could cause covered persons to have to keep records indefinitely).
- **90008.3(b)(1)** – For complaints received via email or the internet, the proposed rules require a written acknowledgement within 3 days. DFPI should provide clarity on whether this acknowledgement can be auto-generated.
- **90008.3(b)(2)** – The timeline for sending acknowledgements is reasonable except when the complaint is received by mail. Given the number of persons operating remotely, it’s nearly impossible for companies to meet this timeline, especially when the acknowledgment has to be sent back by regular mail.
- **90008.3(c)** – The requirement that all complaints are investigated unless a covered entity is providing a full refund is reasonable, as long as the definition of “complaint” is significantly clarified as mentioned in the previous section of this comment letter.

- **90008.3(c)(1)** – ETA believes that companies should have the ability to delegate the handling of complaints to a third party given that third parties can likely build a better complaint process than each individual company. ETA finds no justification for the prohibition of delegating the process to a third party as long as the underlying liability of the 3rd party and complaints rests with the company. The proposed requirement could effectively disable new market entrants from scaling quickly, creating a significant competitive advantage for established market participants with in-house agents.
- **90008.3(c)(2)** – For complaints regarding the conduct of third parties, the proposed rule requires that covered persons require third parties to investigate each complaint and to forward all relevant documents and findings to the covered person. Implementation of this broad requirement may not be feasible with all third parties, depending on how the DFPI intends to define “third party.”
- **90008.3(c)(3)** – As the proposed rule specifies that an “officer” must be designated as having primary responsibility for the complaint process, DFPI should define “officer”.
- **90008.3(d)(2)** – For tracking complaints, the proposed rule specifies that the tracking must be in a format accessible to the Department upon request, but it does not define formats that are accessible to the Department. DFPI should clarify what formats are acceptable to meet this requirement.
- **90008.3(d)(3)** – The proposed rule would require covered persons to respond to complaints within “three calendar days”. Numerous federal holidays that are in conjunction with a weekend would make this requirement unfeasible. Therefore, DFPI should modify this provision to “three business days”.
- **90008.3(e)(1)** – Requiring that the final decision be made within 15 calendar days is unreasonable as it does not allow time for receiving the complaint; tracking all the necessary fields; investigating the complaint, which could require substantive time if there is any sort of systematic issue; determining what the appropriate resolution is; and drafting a final response. This timeframe is a shorter period than the CFPB requires of its supervised entities, and it will likely lead to higher headcount needs and resourcing costs. Again, this requirement would disadvantage market participants attempting to scale new consumer products.

The United Kingdom has similar timeline requirements, but their requirements provide companies 30 days to send a final response with the caveat that if the company was unable to send a final response because more time was required to fully investigate the complaints, the company could meet the 30-day requirement by sending notice to the customer that it required more time to investigate and would send a final response as soon as possible.

- **90008.3(e)(1)(B)** – When responding to a complaint, the proposed rule specifies requirements for any complainant who claims a financial hardship. DFPI should define and provide clarity for the term “financial hardship”. Moreover, any complaint involving a claim of financial hardship must be expedited with a final decision sent 7 calendar days after receiving the complaint. This requirement is impractical given the time required to investigate, resolve, and respond.
- **90008.3(h)(12)(B),(C)** – Requires detailed quarterly complaints reporting to the DFPI that would be made available to the public, and a detailed annual report regarding inquiries. Some of the required data will be difficult to track and lack a clear connection to consumer protection. For example, customer service agents are unlikely to distinguish between a “service provider” and a “third party to whom the covered person referred the consumer,” as required by the proposed rule. ETA believes that this rule could impose a significant burden on new market participants without providing clear benefits for consumers.

#### **Rule 90008.4: Inquiry Processes and Procedures.**

- The proposed rules specify requirements for inquiries that covered persons must obtain from every person who makes an inquiry, including name, phone number, mailing address, etc. Obtaining this

information from every person who calls a business to ask a question would be an extreme operational burden. Therefore, this requirement should be limited to only complaints.

- DFPI should provide clarity for whether or not there is a retention requirement for inquiries.

**The rule would transform customer support processes into enforceable requirements.**

Today, customer support for consumer financial products is an essential component of a business's customer relationship and a key compliance management pillar that can prevent or mitigate potential consumer harm. Through the CCFPL and the DFPI's draft rule, however, typical complaints management functions would be transformed into requirements enforceable by the DFPI under its enhanced UDAAP authority. (Rule §§ 90011-90017). Notably, the DFPI did not have general UDAAP enforcement authority prior to the passage of the CCFPL, so the proposed rules mark a material expansion of DFPI authority. Moreover, the DFPI would have authority under the rule to review complaint processes to assess effectiveness of the policies and actions taken in response to complaints, which could lead to enforcement actions based solely on the lack of complaints processes (as compared to violations of consumer financial laws that naturally stem from failure to manage complaints). To avoid deterring market entry, the DFPI could provide a grace period to cure violations, or launch of a new complaints management process, during which covered persons could remediate issues identified by the DFPI.

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We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any aspect of our comments, please contact me or ETA Senior Vice President, Scott Talbott at [REDACTED].

Respectfully Submitted,  
[REDACTED]

Max Behlke  
Director, State Government Relations  
Electronic Transactions Association  
[REDACTED] | [REDACTED]



**ETA is the world's leading advocacy and trade association for the payments industry.** Our members span the breadth of significant payments and fintech companies, from the largest incumbent players to the emerging disruptors in the U.S and in more than a dozen countries around the world.

