

**INITIAL STATEMENT OF REASONS  
FOR THE ADOPTION OF RULES UNDER THE  
CALIFORNIA CONSUMER FINANCIAL PROTECTION LAW:  
Consumer Complaints and Inquiries  
PRO 03-21**

**I. BACKGROUND INFORMATION REGARDING THE CALIFORNIA CONSUMER FINANCIAL PROTECTION LAW**

On September 25, 2020, Governor Newsom signed Assembly Bill 1864 (“AB 1864”)<sup>1</sup>, establishing the California Consumer Financial Protection Law (“CCFPL”)<sup>2</sup> administered by the Department of Financial Protection and Innovation (“Department”).

AB 1864 was enacted to expand the Department’s oversight authority over business activity it could not previously regulate including, but not limited to, debt collection, debt settlement, credit repair, check cashing, rent-to-own contracts, retail sales financing, consumer credit reporting, and lead generation.<sup>3</sup> The author of the bill explained the need for this greater oversight as follows:

I introduced AB 1048 to start the important conversation of strengthening our consumer financial protection capabilities at the state level. In March 2019, the Assembly Banking Committee held an informational hearing to examine gaps in our existing regulatory approach. Subsequent to that hearing, I worked with a coalition of former Consumer Financial Protection Bureau (“CFPB”) officials and consumer law experts to shape a vague concept into a specific proposal for the Legislature to consider. The Governor’s inclusion of the proposal in his January budget provided a pathway for our state regulator to receive the necessary resources and authority to carry out a renewed vision of putting consumers first. AB 1864 will provide the renamed Department of Financial Protection and Innovation with the appropriate authority to oversee unregulated areas of the financial marketplace, creating a best-in-class state regulatory agency that will protect California consumers from unfair, deceptive, and abusive practices by financial services companies.<sup>4</sup>

The CCFPL incorporates many of the same provisions found in federal law, specifically Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Title X”)<sup>5</sup> which established the CFPB. For example, the CCFPL applies only to “covered persons,” defined as persons that offer or provide a consumer financial product or service, any affiliates acting as service

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<sup>1</sup> Stats. 2020, ch. 157 (A.B. 1864), § 7, eff. Jan. 1, 2021.

<sup>2</sup> Fin. Code, § 90000 et seq.

<sup>3</sup> Sen. Banking and Financial Institutions Com., Rep. on Assem. Bill No. 1864 (2019-2020 Reg. Sess.) as amended Aug. 25, 2020, p. 4.

<sup>4</sup> *Ibid.*

<sup>5</sup> Pub.L. No. 111-203 (July 21, 2010) 124 Stat. 1955.

providers, and any service providers that offer or provide their own consumer financial product or service.<sup>6</sup> As in Title X, a “service provider” is any person that provides a material service to a covered person in connection with the offering or provision by that covered person of a consumer financial product or service.<sup>7</sup> The CCFPL also uses a similar definition for “financial products or services,”<sup>8</sup> prohibits similar types of unfair, deceptive, or abusive acts or practices with respect to those financial products or services<sup>9</sup>, and provides expansive enforcement power for the Department to commence civil actions for violating consumer financial protection laws.<sup>10</sup> Finally, the CCFPL similarly provides rulemaking authority for the Department to promulgate regulations to implement specific provisions of the law.

This rulemaking action proposes to enact new regulations to implement, interpret, and make specific the provisions in Financial Code section 90008.

## **II. PROBLEM STATEMENT**

Financial Code section 90008, subdivision (a) requires the Department to, by rule, establish reasonable procedures for covered persons<sup>11</sup> to provide a timely response to consumers regarding complaints against, or inquiries concerning, a covered person. However, the statute does not specify what those procedures should include.

Financial Code section 90008, subdivision (b) requires the Department to, by rule, establish reasonable procedures for covered persons to provide a timely response to the Department regarding a consumer complaint or inquiry. However, other than generally requiring the response to include steps taken by the covered person to respond to the complaint or inquiry, responses received by the covered person from the consumer, and follow-up actions or planned-follow-up actions to respond to the complaint or inquiry, the statute does not specify what those procedures should include.

Financial Code section 90008, subdivision (d) excludes “nonpublic or confidential information” from the requirement to comply with a consumer request for information in the control or possession of the covered person. However, the statute does not specify what constitutes nonpublic or confidential information, other than confidential supervisory information.

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<sup>6</sup> Compare Fin. Code, § 90005, subd. (f) with Pub.L. No. 111-203 (July 21, 2010) 124 Stat. 1956.

<sup>7</sup> Compare Fin. Code, § 90005, subd. (n)(1) with Pub.L. No. 111-203 (July 21, 2010) 124 Stat. 1962.

<sup>8</sup> Compare Fin. Code, § 90005, subd. (k) with Pub.L. No. 111-203 (July 21, 2010) 124 Stat. 1957-1960.

<sup>9</sup> Compare Fin. Code, § 90003, subd. (a) with Pub.L. No. 111-203 (July 21, 2010) 124 Stat. 2010.

<sup>10</sup> Compare Fin. Code, §§ 90012, 90013 with Pub.L. No. 111-203 (July 21, 2010) 124 Stat. 2028.

<sup>11</sup> Financial Code section 90008, subdivision (e) makes it clear the responsibility in subdivision (a) to provide a timely response to consumers is the covered person’s responsibility.

### III. BENEFITS ANTICIPATED FROM REGULATORY ACTION

The anticipated benefits of these proposed regulations include greater protections for consumers of financial products and services offered or provided by covered persons. The proposed regulations will ensure covered persons have appropriate procedures to review, investigate, respond to, track, and report consumer complaints and inquiries. Without these regulations, there would be no specific requirements for covered persons to respond to complaints and inquiries, conduct meaningful investigations, or take appropriate steps to address issues raised by the consumer complaints and inquiries. Covered persons would also not be subject to enforcement action by the Department for violating these provisions.<sup>12</sup>

The proposed regulations should also improve the quality of financial services and products offered, thereby improving the public perception of covered persons, increasing the public's trust in these financial products and services, and bringing more business to each covered person. The proposed regulations may also result in some cost savings, as covered persons should be able to identify problems more quickly and, by fixing these issues, improve and streamline their services. The Department also anticipates the regulations will result in fewer instances of substandard financial products and services and fewer instances of unlawful, unfair, deceptive, or abusive acts and practices by covered persons.

### IV. SPECIFIC PURPOSE OF REGULATIONS

**Section 1070:** The purpose of this section is to clarify and make specific the types of covered persons not subject to the requirements in Sections 1072, 1073, and 1074.

**Section 1071:** The purpose of these provisions is to clarify and make specific the definitions of terms used in this Article relating to consumer complaints and inquiries.

**Section 1072:** The purpose of these provisions is to clarify and make specific the required procedures for covered persons to provide a timely response to consumer complaints, including the procedures for the initiation of consumer complaints, the acknowledgement of receipt of complaints, the review and evaluation of complaints, the tracking of complaints, the responses to complaints, the recording of complaints, the administration of the complaint process without discrimination, and the reporting of complaints to the Department.

**Section 1073:** The purpose of these provisions is to clarify and make specific the required procedures for covered persons to provide a timely response to consumer inquiries, including the procedures for initiating inquiries, reviewing and evaluating inquiries, responding to inquiries, retaining records of written inquiries, tracking inquiries, administering the inquiry process without discrimination, and reporting inquiries to the Department.

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<sup>12</sup> Fin. Code, § 90008, subd. (e).

**Section 1074:** The purpose of these provisions is to clarify and make specific the required procedures for covered persons to provide a timely response to the Department regarding consumer complaints and inquiries, including follow-up requests for information from the Department.

**Section 1075:** The purpose of these provisions is to clarify and make specific the definition of “nonpublic or confidential information” as used in Financial Code section 90008, subdivision (d)(2)(D).

## V. NECESSITY

**Section 1070:** The exemptions clarify that a consumer reporting agency and a student loan servicer are not subject to the requirements in Sections 1072, 1073, and 1074.

Proposed subdivision (a) restates the exemption in Financial Code section 90008, subdivision (c). This restatement of law is without regulatory effect because Financial Code section 90008, subdivision (c) exempts consumer reporting agencies, as defined by the Fair Credit Reporting Act in 15 U.S. C. Sec. 1681a(f), from the requirements in Financial Code sections 90008, subdivisions (a) and (b), including any rules promulgated thereunder, and the Department has no discretion to adopt a different rule.<sup>13</sup> Although proposed subdivision (a) restates Financial Code section 90008, subdivision (c), this provision is necessary to clarify that not only student loan servicers, but also consumer reporting agencies, are exempt from Sections 1072, 1073, and 1074.<sup>14</sup>

Proposed subdivision (b) is reasonably necessary due to the potentially conflicting and more specific requirements in the Civil Code<sup>15</sup> for student loan servicers to respond to qualified requests and qualified written requests made by student loan borrowers. For example, Civil Code section 1788.102, subdivision (t)(1) requires student loan servicers to acknowledge receipt of a qualified written request from a borrower within 10 business days and to respond within 30 business days. These more specific statutory requirements in the Civil Code, to the extent they are less stringent for student loan servicers than the corresponding requirements in these proposed rules,<sup>16</sup> would take precedence over these proposed rules.<sup>17</sup> Therefore, it is necessary to exempt student loan servicers because they are already subject to the more specific requirements in the Civil Code.

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<sup>13</sup> Cal. Code Regs., tit. 1, § 100, subd. (a)(6).

<sup>14</sup> Gov. Code, § 11349, subd. (f); Cal. Code Regs., tit. 1, § 12, subd. (b)(1).

<sup>15</sup> Civ. Code, § 1788.100 et seq.

<sup>16</sup> See proposed Section 1072, subd. (b)(2), (b)(3), and (e)(1).

<sup>17</sup> *State Dept. of Public Health v. Superior Court*, 60 Cal.4<sup>th</sup> 940, 960; see also Code Civ. Proc., § 1859 [“when a general and particular provision are inconsistent, the latter is paramount to the former”].

**Section 1071:** The introductory paragraph to this section incorporates the definitions in Financial Code section 90005, which are necessary to understand the meanings of certain terms when used in the proposed rules. By incorporating the same definitions provided by the Legislature in Financial Code section 90005 of the CCFPL, this paragraph will prevent confusion and ensure consistency in the meanings of those terms.

**Section 1071, subdivision (a):** Proposed subdivision (a) defines “complaint.” This definition is reasonably necessary to provide the public with guidance on how to comply with the proposed rules. The Department chose this definition to mirror the dictionary definition of “complaint” (an expression of grief, pain, or dissatisfaction).<sup>18</sup> However, to limit the types of complaints for which covered persons must comply with Section 1072, the Department narrowed this definition to only include complaints from complainants regarding a financial product or service under the CCFPL, including the associated acts, omissions, decisions, conditions, and policies of the covered persons and service providers who offer or provide those financial products and services. This narrower definition is necessary because Financial Code section 90008, subdivision (a) requires the complaint procedures to relate to complaints against a covered person, which is defined in relevant part as a person who engages in offering or providing a consumer financial product or service.<sup>19</sup>

**Section 1071, subdivision (b):** Proposed subdivision (b) defines “complainant.” This definition is reasonably necessary to provide the public with guidance on how to comply with the proposed rules. The Department chose this definition to mirror the dictionary definition of “complainant” (one who complains).<sup>20</sup> However, to limit the types of complainants to which covered persons must provide a response, the Department narrowed the definition to only include complainants who have had sufficient contact with the covered person: those who are contracted with, have applied to be contracted with, or have had a debt or other obligation assigned to, the covered person. The definition also includes a representative or other individual with authority to act on the consumer’s behalf in the event a consumer is unable to directly submit a complaint to the covered person without assistance; this is necessary to afford such consumers the same protections as those filing complaints directly.

**Section 1071, subdivision (c):** Proposed subdivision (c) defines “denied complaint.” This definition is reasonably necessary to provide the public with guidance on how to comply with the proposed rules, including Section 1072, subdivision (h)(8). The Department chose this

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<sup>18</sup> Merriam-Webster’s Online Dict. (2021) <<http://www.merriam-webster.com/dictionary/complaint>> [as of Dec. 22, 2021] “complaint,” definition no. 1.

<sup>19</sup> Fin. Code, § 90005, subd. (f)(1).

<sup>20</sup> Merriam-Webster’s Online Dict. (2021) <<http://www.merriam-webster.com/dictionary/complainant>> [as of Dec. 22, 2021] “complainant,” definition no. 2.

definition to reflect the meaning of this term commonly understood by industry and other stakeholders.

**Section 1071, subdivision (d):** Proposed subdivision (d) defines “final decision.” This definition is reasonably necessary to provide the public with guidance on how to comply with the proposed rules, including Section 1072, subdivision (e). The Department chose this definition to clarify what constitutes a final decision by the covered person in responding to a complaint. For the protection of complainants, it is necessary to define “final decision” as the conclusion a covered person communicates to the complainant only after the covered person has considered the complaint, performed any necessary investigation, and concluded what further action is necessary. This is necessary to ensure a decision is not considered final until the covered person has conducted due diligence.

**Section 1071, subdivision (e):** Proposed subdivision (e) defines “inquiry.” This definition is reasonably necessary to provide the public with guidance on how to comply with the proposed rules. The Department chose this definition to mirror the dictionary definition of an inquiry (“a request for information”).<sup>21</sup> However, to limit the types of inquiries for which covered persons must follow the procedures in Section 1073, it is necessary to narrow this definition to apply only to inquiries from inquirers regarding a specific issue or problem with a financial product or service under the CCFPL. This narrower definition is necessary because, pursuant to Financial Code section 90008, subdivision (a), the prescribed procedures related to inquiries must concern a covered person, which is defined in relevant part as a person who engages in offering or providing a consumer financial product or service.<sup>22</sup>

**Section 1071, subdivision (f):** Proposed subdivision (f) defines “inquirer.” This definition is reasonably necessary to provide the public with guidance on how to comply with the proposed rules. The Department chose this definition to mirror the dictionary definition of an inquirer (“a person who asks a question or seeks to learn about something”).<sup>23</sup> However, to limit the types of inquirers to which covered persons must provide a response, it is necessary to narrow this definition to apply only to consumers who are contracted with, have applied to be contracted with, or have had a debt or other obligation assigned to, the covered person; these are the consumers most likely to encounter a specific issue or problem with a financial product or service under the CCFPL. The definition includes a representative or other individual with authority to act on the consumer’s behalf in the event a consumer is unable to directly submit

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<sup>21</sup> Merriam-Webster’s Online Dict. (2021) <<http://www.merriam-webster.com/dictionary/inquiry>> [as of Dec. 22, 2021] “inquiry,” definition no. 1.

<sup>22</sup> Fin. Code, § 90005, subd. (f)(1).

<sup>23</sup> Dictionary.com Online Dict. (2021) <<https://www.dictionary.com/browse/inquirer>> [as of Dec. 22, 2021] “inquirer,” definition no. 1.

an inquiry to the covered person without assistance; this is necessary to afford such consumers the same protections as those submitting inquiries directly.

**Section 1071, subdivision (g):** Proposed subdivision (g) defines “officer.” This definition, which incorporates the definition from the Financial Institutions Law<sup>24</sup>, is reasonably necessary to provide the public with guidance on how to comply with the proposed rules, including the requirements in Section 1072, subdivision (c)(3). The Department chose this definition because, although it comes from a different law, it has been adopted by the Legislature and provides a definition of the term “officer” for covered persons that are corporations and those that are not, including limited liability companies.

**Section 1072:** Financial Code section 90008, subdivision (a) requires rules establishing reasonable procedures for covered persons to provide a timely response to consumer complaints. To ensure compliance with this statutory requirement, proposed Section 1072 sets forth standards for covered persons to include in their policies and procedures regarding consumer complaints.

The flush language to Section 1072 is necessary to ensure covered persons have a system in place to respond to complainants and that their policies and procedures are updated to include the requirements in these proposed rules. This flush language is also necessary to ensure a covered person’s response to the complainant is not only timely but thorough and complete.

The flush language further provides that service providers and affiliates shall not be responsible for responding to complaints or for developing and implementing these policies and procedures, unless directed by the principal party offering the financial product or service. This provision is reasonably necessary to clarify the obligations of each type of covered person with respect to the processes and procedures required in Section 1072. Without this provision, it would be unclear which type of covered person is responsible because Financial Code section 90005, subdivision (f) defines “covered person” to include any of the following: 1) any person that engages in offering or providing a consumer financial product or service to a resident of this state, 2) any affiliate of a person described in this subdivision if the affiliate acts as a service provider to the person, and 3) any service provider to the extent that the person engages in the offering or provision of its own consumer financial product or service. This provision is also necessary to help ensure the principal party offering the financial product or service maintains effective control over the handling of complaints and any development of policies and procedures by affiliates and service providers regarding complaints.

The flush language also authorizes the Commissioner to review the covered person’s complaint process, including records of each complaint received, to assess the effectiveness of the policies and procedures and the action taken in responding to complaints. This provision is necessary

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<sup>24</sup> Fin. Code, § 190.

for the Commissioner to determine whether the covered person has complied with the requirements of Section 1072 and take corrective action if needed.

**Section 1072, subdivision (a):** Proposed subdivision (a) sets forth requirements regarding the initiation of a complaint, which are reasonably necessary for complainants to begin the complaint process.

Proposed subdivision (a)(1) requires a procedure to provide consumers with a complaint form for submitting written complaints. This provision is reasonably necessary to elicit from the complainant the information needed for the covered person to investigate the complaint. Subdivision (a)(1) also requires the complaint form to be available in electronic format on the covered person's website and, upon request, in paper format at each physical location of the covered person accessible to its consumers. This provision is reasonably necessary to ensure consumers are not precluded or discouraged from filing a complaint due to limited access to the complaint form. Proposed subdivisions (a)(1)(A) through (a)(1)(G) require the complaint form to include a description of the complaint process, a field for the complainant's name, a field for the complainant's mailing address, a field for the complainant's e-mail address, a field for the complainant to explain the nature and details of the complaint, and an opportunity to attach supporting documentation. These provisions are reasonably necessary to provide transparency regarding the complaint process, which may encourage consumers to use it. They are also necessary to ensure covered persons receive the complainant's contact information, which is needed for covered persons to comply with rules that require follow-up communications to the complainant. They are also necessary to elicit sufficient detail about the complaint to allow the covered person to investigate the complaint, as required by these rules.

Proposed subdivision (a)(2) prohibits covered persons from requesting any additional personal identifying information beyond what is provided in the complaint form or any financial information unrelated to the complaint. It is reasonably necessary to prohibit these types of requests because no further information is needed to process the complaint and requiring additional information could discourage the submission of complaints. Consumers may not wish to provide additional personal or financial information to a covered person with whom they already have a problem or dispute, particularly in situations where the covered person is a debt collector asking for the consumer's bank account information.

Proposed subdivision (a)(3) requires written communications to consumers, except electronic text messages, to disclose in at least 12-point font the procedure for filing both oral and written complaints with the covered person. This requirement is reasonably necessary to provide consumers with guidance in each communication on how to file a complaint, without requiring the consumer to search for that guidance. It is reasonably necessary for the font size to be at least 12-point to ensure the disclosure is legible and visible to consumers. It is reasonably necessary to exclude from the font size requirement electronic text messages, which are



subject to character limitations and generally not the primary mode of communicating important information with consumers. The disclosure regarding the option to submit a complaint to the Department is reasonably necessary to ensure consumers understand they are not limited to filing complaints with the covered person and may also file their complaints directly with the Department at any time. The availability of this option is necessary to ensure that complainants, who may not feel comfortable submitting or appealing their complaints directly with the covered person for a variety of reasons, have an avenue to submit their complaints to the applicable regulator.

Proposed subdivision (a)(4) requires covered persons to prominently display a link on their main webpage to the complaint form and to instructions and details on how to submit a complaint. This provision is reasonably necessary to make the complaint process easily accessible on the covered person's webpage, which could be one of the first places a consumer looks to obtain information regarding the complaint process.

Proposed subdivision (a)(5) requires the covered person to maintain a telephone number for consumers to file complaints orally with a live representative during regular business hours or to leave a voicemail message for a call back within 24 hours. These provisions are necessary to make the complaint process widely available to consumers, including those without access to the internet or electronic communication and those who prefer other means of communication. It is necessary to require the live representative to document the details of an oral complaint on the written complaint form to ensure consistency between written complaints and those filed orally. It is necessary for the live representative to be available during regular business hours because that is when covered persons are open for business and most likely to receive calls from complainants. The option to have complainants leave a voicemail message for a call back is necessary to ensure the consumer's need to timely file an oral complaint does not unduly burden the covered person, who needs to make a live representative available to receive and record each oral complaint. It would be overly burdensome to require live representatives, who may be unavailable while helping other customers, to take each call. Twenty-four hours is a reasonable amount of time for a call back; this is the recommended timeframe for most business professionals to return calls<sup>25</sup> and will not significantly delay the consumer's filing of an oral complaint.

Proposed subdivision (a)(6) requires a covered person who negotiates a contract with a consumer primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, to make the complaint process available in English and the language in which the contract was negotiated. This

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<sup>25</sup> <<https://www.voicemailoffice.com/news/business-voicemail-etiquette-ii-returning-calls/>>, <<https://telzio.com/blog/business-voicemail-greetings>>, <<https://smallbiztrends.com/2021/07/business-voicemail-greeting.html>>, <<https://blog.hubspot.com/sales/sales-voicemail-tips-that-guarantee-callbacks>>, and <<https://www.clevelandmetroschools.org/Page/4351>>.

provision mirrors Civil Code section 1632, which requires any person who negotiates primarily in those five languages to provide a translation of the contract in the language used to negotiate. The Department has determined it is reasonably necessary for the protection of consumers who are unable to file complaints in English to require covered persons to provide language assistance during the complaint process to complainants whose contracts must also be translated.

Proposed subdivision (a)(7) prohibits a covered person from imposing a time limit for filing a complaint shorter than four years from the occurrence of the complained of act, omission, decision, condition, or policy. This provision is reasonably necessary to ensure the only complaints covered persons can prevent consumers from filing are at least four years old, for which there may no longer be any recollection by the individuals involved or any records maintained by the covered person. The Department chose this amount of time to match the four-year statute of limitations established by the Legislature for breach of contract actions in Code of Civil Procedure section 337 because the relationship between a covered person and a consumer, including the basis for the consumer's complaint, is often contractual.

Proposed subdivision (a)(8) prohibits a covered person from treating a complaint as incomplete if the complainant can be reasonably identified from the information provided and any missing information is available in the covered person's customer records. This provision is reasonably necessary to prevent the improper rejection of complaints as incomplete when the missing information can be reasonably ascertained or obtained from the covered person's own customer records.

**Section 1072, subdivision (b):**

Proposed subdivision (b) sets forth requirements regarding the written acknowledgement of receipt of a complaint, which must advise that the complaint has been received and include the date of receipt, a unique tracking number, and the telephone number and email address that can be used to contact the representatives who have been designated to handle the complaint. It is necessary for covered persons to provide this acknowledgement of receipt, including the information required by the rule, so that complainants can receive assurance their complaint has been initiated and is being considered, can contact the covered person's representatives regarding their complaint, and can quickly identify the complaint in future communications.

Proposed subdivision (b)(1) requires covered persons to, within one calendar day after receiving a complaint via e-mail or the internet, provide the complainant with an e-mail message confirming successful electronic submission of the complaint. This requirement is reasonably necessary to help prevent the unnecessary resubmission of duplicate complaints by complainants who may be unsure whether their initial submissions were successfully transmitted. The rule also requires covered persons to, within five calendar days after receiving

a complaint via e-mail or the internet, provide a written acknowledgement of receipt from the e-mail address provided to the complainant in subdivision (b). This provision is reasonably necessary to ensure complainants receive timely assurances their complaints have been initiated and are being considered. Five days is a reasonable length of time for covered persons to provide an electronic written acknowledgement of receipt with very few required elements. Both the confirmation of successful electronic submission and the acknowledgement of receipt should be sent from the designated e-mail address identified in subdivision (b) to ensure the complainant has the appropriate email address for further communication with the covered person. It is reasonably necessary to allow the confirmation and the acknowledgement of receipt to be combined because, in some instances, the covered person may be able to provide both within the time allowed for the confirmation e-mail. In those instances, it would be unreasonable to require the covered person to send two separate e-mail communications to the complainant.

Proposed subdivision (b)(2) requires covered persons to, within seven calendar days of receiving a complaint via postal mail, provide a written acknowledgement of receipt via postal mail. This provision is reasonably necessary so complainants can receive timely assurances their complaints have been initiated and are being considered. Seven days is a reasonable length of time for covered persons to provide via postal mail a written acknowledgement of receipt with very few required elements and is commensurate with the method of submission selected by the complainant to file the complaint. Of the available options, postal mail is the slowest method of submission.

Proposed subdivision (b)(3) requires, for complaints received via telephone, covered persons to orally provide the complainant with a unique tracking number and to provide, via postal mail within seven (7) calendar days of receiving the complaint, the written acknowledgement of receipt required by subdivision (b). This provision is reasonably necessary so complainants can receive written confirmation their oral complaint has been filed and is being considered. It is necessary to orally provide a tracking number so the complaint can be easily identified before the written acknowledgment is received. Seven days is a reasonable length of time to provide a written acknowledgement of receipt with very few required elements. It is necessary to require the written acknowledgement of receipt to be provided via postal mail because consumers who file their complaints via telephone have chosen not to file via e-mail and may therefore prefer to receive written correspondence via postal mail.

Proposed subdivision (b)(4) allows covered persons to combine the written acknowledgement of receipt with the issuance of a final decision if they are issued within the required time for the acknowledgement. This provision is reasonably necessary because in some instances, the covered person may be able to fully respond to a complaint within the time allowed for an

acknowledgement of receipt. In those instances, it would be unreasonable to require the covered person to send two separate communications to the complainant.

**1072, subdivision (c):** Proposed subdivision (c) sets forth requirements to review and evaluate complaints.

Proposed subdivision (c)(1) requires each complaint to be reviewed by staff of the covered person responsible for the services and operations which are the subject of the complaint. This provision is reasonably necessary to ensure the complaint is reviewed by individuals qualified to provide a response.

For complaints that do not require further investigation, proposed subdivision (c)(1)(A) requires covered persons to document the names of all individuals who decided not to investigate and the reason an investigation was not needed to resolve the complaint, including the specific provisions in the covered person's policies and procedures supporting the decision not to investigate. This provision is reasonably necessary to ensure accountability of the individuals responsible for reviewing and investigating the complaint and to ensure the covered person's policies and procedures provide sufficient guidance to those individuals to support any decision not to investigate; otherwise, these individuals might improperly resolve certain complaints against complainants without an investigation. The proposed rule also provides an example of a situation where an investigation is not necessary: if the covered person makes a full and prompt refund of the amount at issue or a full and prompt cancellation or adjustment of the debt at issue. This provides clarity to covered persons regarding an acceptable response to a common situation, and the proposed remedy restores the complainant to the status quo.

For complaints that require further investigation, proposed subdivision (c)(1)(B) requires the covered person to ascertain the cause of the issue by conducting a thorough review of all relevant documents and of the individuals who may have committed, or been responsible for, the complained of acts, omissions, decisions, conditions, or policies. This provision is reasonably necessary because only the covered person, and not the complainant, has access to the relevant documents and individuals from which further information can be obtained to resolve the complaint. Investigations are not only valuable to resolve the individual complaint but also to discover broader problems that may require forward-looking policy changes for prevention and backward-looking refunds or adjustments to provide remedies to similarly situated consumers.

If corrective action is needed, proposed subdivision (c)(1)(C) requires the covered person to provide an appropriate remedy to the complainant and take appropriate steps to prevent recurrence of the issue, which may include policy changes and employee training. This provision is reasonably necessary to ensure the covered person's accountability to the consumer for the specific complaint and to prevent the same problem from arising in the future

for other consumers. It is reasonably necessary to require the covered person to provide an appropriate remedy to the complainant, because an account adjustment, credit, or refund may not always be the most appropriate relief; for example, the consumer may prefer to instead obtain a different financial product or service offered by the covered person at a discounted rate. It is reasonably necessary to require the covered person to take appropriate steps to prevent recurrence because policy changes and employee training may not always be the most appropriate corrective action to address the problem; for example, it may be more appropriate to withdraw or modify the financial product or service or to terminate the problematic employee.

Proposed subdivision (c)(2) requires covered persons to require contracted third parties to also investigate each complaint involving third party conduct using the procedure in proposed subdivision (c)(1)(B) and forward all relevant documents and findings. This provision is reasonably necessary to ensure accountability of contracted third parties and to provide the covered person with guidance regarding the third party's responsibilities in investigating and responding to a complaint. It is reasonably necessary to require contracted third parties that are the subject of complaints to conduct the same type of review and investigation required for covered persons because the third parties are delegated functions the covered person would otherwise need to perform in offering or providing its financial products and services to consumers. Contractual provisions setting forth the third parties' responsibilities to investigate these complaints and the consequences for violating those responsibilities are necessary to ensure compliance by contracted third parties.

Proposed subdivision (c)(3) requires an officer of the covered person to be designated as having primary responsibility for the complaint process. This provision is necessary to build accountability and to ensure a central authority figure oversees and monitors the complaint process.

Proposed subdivision (c)(3)(A) requires the officer to, at least once each month, review the complaint process to identify any emerging patterns of complaints, provide appropriate remedies to consumers that experience similar issues, and take appropriate steps to prevent recurring problems that adversely affect consumers. This provision is reasonably necessary to build accountability and ensure covered persons internally police and correct their own conduct when patterns of complaints reveal problem areas. The requirement for an officer to review the complaint process at least once a month is reasonably necessary to ensure sufficient frequency to develop the expertise needed to review the complaint process and identify emerging patterns. It is reasonably necessary for the officer to provide appropriate remedies to consumers experiencing the same issue, including those who have not filed their own complaints, because not all consumers have the sophistication or ability to file a complaint. It is reasonably necessary to require the officer to take appropriate steps to prevent recurring

problems because policy changes and employee training may not always be the most appropriate corrective action to address a problem; for example, it may be more appropriate to withdraw or modify the financial product or service or to terminate the problematic employee.

Proposed subdivision (c)(3)(B) requires the officer to, at least once each month, review all complaints regarding the conduct of third parties to determine whether the covered person's standards for vetting and monitoring third parties were met and whether those standards should be revised. This provision is reasonably necessary to ensure accountability of third parties and to improve oversight by covered persons of the actions taken by third parties with respect to consumers. Without this provision, third parties would only have an economic incentive to satisfy the covered person because consumers do not often choose the third parties selected by their covered person.<sup>26</sup> The requirements in this provision will provide a counterweight to that economic incentive. The requirement for an officer to, at least once a month, review all complaints regarding the conduct of third parties is reasonably necessary to ensure sufficient frequency to develop the expertise needed to review these complaints and identify emerging patterns.

**Section 1072, subdivision (d):** Proposed subdivision (d) sets forth requirements to track complaints and communicate with the complainant regarding the status of the complaint.

Proposed subdivision (d)(1) requires the procedure to include a process for recording the status of a complaint and all target dates for further actions regarding the complaint, including the issuance of a final decision. This provision is reasonably necessary to ensure covered persons are tracking, investigating, and resolving complaints and to ensure the covered person's books and records reflect this.

Proposed subdivision (d)(2) requires the tracking of complaints to be provided to the Department upon request and in any electronic format requested by the Department. This provision is reasonably necessary for the Department to be able to access information regarding the status of complaints, including during regulatory examinations of the covered person. It is reasonably necessary to require the tracking of complaints to be provided in any electronic format requested by the Department to facilitate transmission of this information to the Department upon request without the need to track down and mail a hard copy.

Proposed subdivision (d)(3) requires the covered person to respond with a status update to the complainant within five days in the same format as the complainant's request, so long as the complainant requests a status update using the telephone number or email address provided pursuant to subdivisions (a)(4) and (b)(1). This provision is reasonably necessary to hold the

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<sup>26</sup> News Release, *CFPB to Hold Financial Institutions and their Service Provider Accountable* (April 13, 2012) <<https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-to-hold-financial-institutions-and-their-service-providers-accountable/>> (as of Dec. 22, 2021).

covered person accountable to the complainant and keep the complainant updated so that the complainant can seek other remedies if necessary. Five days is a reasonably necessary amount of time to provide a status update because the covered person may need to first check for the status with the individuals responsible for reviewing, investigating, and responding to the complaint, which could take several days.

**Section 1072, subdivision (e):** Proposed subdivision (e) sets forth requirements for a covered person's response to a complaint.

Proposed subdivision (e)(1) requires the covered person to respond in writing with a final decision on all issues within 15 calendar days of receiving the complaint. Proposed subdivision (e)(1)(A) provides the covered person with up to 45 additional calendar days if the covered person needs additional time to respond and provides the complainant with a written update regarding the status of the complaint, the reason for the delay, and an estimate of the additional time needed to issue a final decision. These deadlines are necessary to ensure covered persons timely respond to and resolve complaints. These timeframes mirror those required by the CFPB at the federal level. Although the CFPB's pathway for the processing of a complaint (consumers submit complaints to the CFPB, which forwards the complaint to the company for a response) differs from that in Section 1072 (consumers directly submit the complaint to the covered person), the CFPB's timeframes for a company response are instructive and provide a reasonable estimate of how long it should take a covered person to respond. In 2020, the CFPB sent 456,100 consumer complaints to approximately 3,300 companies for review and response. These complaints involve many of the same types of financial products or services offered by covered persons under the CCFPL, including debt collection, credit reporting, credit repair, and various other types of lending. According to the CFPB, companies provided a timely response approximately 99% of the time; companies generally responded within 15 days, but in some cases needed to advise that their response was in progress and provide a final response within 60 days after receiving the complaint. The Department has determined a similar timeframe is therefore reasonable to apply to covered persons under the CCFPL.

Proposed subdivision (e)(2) requires the written response to contain a clear explanation of the covered person's decision in plain language, including the specific reasons for the final decision, a summary of the steps taken to respond to the complaint, any corrective action that will be taken, and the effective date of the corrective action. This provision is reasonably necessary to fulfill the objectives of the complaint process and provide the complainant with an explanation of why and how the complaint was resolved in the manner the covered person resolved it. Proposed subdivision (e)(2) also requires the response to disclose in at least 12-point boldface font that complainants may submit to the Department any complaints not resolved to their satisfaction. This provision is reasonably necessary to ensure complainants understand they

may continue to pursue other remedies such as contacting the Department if they are not satisfied with the covered person's final decision. It is reasonably necessary for the font to be at least 12-point boldface type to ensure the disclosure is legible and visible to consumers.

Proposed subdivision (e)(3) prohibits the covered person from taking adverse action against a complainant, including cancellation of the contract, in retaliation to the filing of a complaint. This provision is reasonably necessary to ensure complainants do not suffer adverse consequences as a result of filing a complaint, which would undermine the purposes of these rules and the CCFPL.

Proposed subdivision (e)(4) allows the covered person to respond to subsequent, duplicative complaints from the same complainant with a written notice stating there will be no response because the complainant previously submitted the same complaint, received a response, and provided no new information in the subsequent, duplicative complaint regarding the same act, omission, decision, condition, or policy. This provision is reasonably necessary to limit the scope of the complaint process to actual complaints in need of resolution and to exclude repeat complaints from the same complainant.

**1072, subdivision (f):** Proposed subdivision (f) sets forth requirements for a covered person to maintain a written record of each complaint for at least five years from the time the complaint was initially filed. This provision is reasonably necessary to protect the covered person in the event of duplicate complaints, to facilitate the officer's review of complaints required by Section 1072(c)(3), and to facilitate the Department's review during regulatory examinations. The records will show how the covered person treated consumers and may also provide covered persons with an incentive to build a culture of compliance. The five-year timeframe is reasonably necessary to ensure the covered person maintains complaint records at least one year past the expiration of the four-year time limit in Financial Code section 90014 for bringing a civil action under the CCFPL; this additional year gives a margin of error, so the covered person does not inadvertently delete records before the statute of limitations expires.

Proposed subdivision (f)(1) requires the written record for each complaint to include the unique tracking number associated with the complaint. This provision is reasonably necessary to ensure the complaint can be quickly identified and to document the covered person's compliance with Section 1072(b)(1) for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(2) requires the written record for each complaint to include the name, phone number, mailing address, and e-mail address of the complainant, if provided. This provision is reasonably necessary to ensure the covered person used the correct contact information for any communications with the complainant regarding the complaint.



Proposed subdivision (f)(3) requires the written record for each complaint to include the name of the financial service or product involved. This provision is reasonably necessary where the covered person provides more than one type of financial service or product, to provide an accurate record for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(4) requires the written record for each complaint to include the name of the covered person or third party identified as the subject of the complaint. This provision is reasonably necessary to identify the individual or entity that is the subject of the complaint and provide an accurate record for the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(5) requires the written record for each complaint to include, for oral complaints, the name of the representative who documented the complaint. This provision is reasonably necessary for the covered person to hold the representative accountable and to ensure compliance with the complaint procedures as required by these rules.

Proposed subdivision (f)(6) requires the written record for each complaint to include the date the complaint was received by the covered person. This provision is reasonably necessary to document the date the complaint was received so the covered person can calculate when the response is due.

Proposed subdivision (f)(7) requires the written record for each complaint to include the date the covered person provided an acknowledgement of receipt. This provision is reasonably necessary to document the covered person's compliance with Section 1072(b) for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(8) requires the written record for each complaint to include the dates of any investigation by the covered person. This provision is reasonably necessary to document the covered person's compliance with Section 1072(c)(1)(B) for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(9) requires the written record for each complaint to include the dates of all responses to the complainant. This provision is reasonably necessary to document the covered person's compliance with Section 1072(e) for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(10) requires the written record for each complaint to include the nature and details of the complaint. This provision is reasonably necessary to document the subject of the complaint for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(11) requires the written record to include the names of all persons who decided not to investigate the complaint and the reason an investigation was not needed. This provision is reasonably necessary to document the covered person's compliance with Section 1072(c)(1)(A) for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(12) requires the written record to include the results of any investigation. This provision is reasonably necessary to document the covered person's compliance with Section 1072(c)(1)(B) and (c)(2) for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(13) requires the written record to include any corrective action taken in response to the complaint. This provision is reasonably necessary to document the covered person's compliance with Section 1072(c)(1)(C) for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(14) requires the written record to include a copy of, or an electronic link to, all contracts, correspondence, and other relevant information upon which the covered person relied in reaching its final decision. This provision is reasonably necessary for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(15) requires the written record to include a copy of all written responses and summaries of all oral responses, including an explanation of the final decision regarding the complaint. This provision is reasonably necessary to document the covered person's compliance with Section 1072(e) for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

**1072, subdivision (g):** Proposed subdivision (g) requires the complaint process to be administered without discrimination. This provision is reasonably necessary to ensure all complainants receive the consumer protections afforded by the complaint process. Researchers have found consumers from predominantly Black or lower-income ZIP codes who filed complaints with the CFPB and had these complaints forwarded to covered persons were disproportionately less likely to receive monetary relief than those who lodged complaints from white-majority ZIP codes.<sup>27</sup> To help ensure fairness to all complainants during the complaint process, the Department drafted this rule to prohibit the same types of discriminatory conduct

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<sup>27</sup> Haendler, Charlotte and Heimer, Rawley, *The Financial Restitution Gap in Consumer Finance: Insights from Complaints Filed with the CFPB* (January 14, 2021), p. 2. <<https://ssrn.com/abstract=3766485>> (as of Dec. 22, 2021) [Complaints from the lowest quintile of household incomes and highest quintile of African American population are approximately 30% less likely to receive financial restitution than complaints from high-income and low-African American share zip codes. At the same time, consumer demographics have no effect on the number of complaints filed.].

the Legislature has already determined to be impermissible for employers in Government Code section 12940, subdivision (a), as well as any other discriminatory basis prohibited by law.

**1072, subdivision (h):** Proposed subdivision (h) requires the covered person to submit to the Department a quarterly complaint report, which shall be made publicly available. The proposed rule requires each report to be verified by an officer authorized to act on behalf of the covered person and to be filed with the Department's Consumer Financial Protection Division no later than 30 calendar days after the end of each quarter. It is reasonably necessary to require quarterly reporting of complaints to the Department and to make those reports public to ensure accountability to consumers and to incentivize a culture of compliance. The reports are also reasonably necessary to provide information needed for the Department's annual report required by Financial Code section 90018, which must include information on actions taken with respect to consumer complaints and resolutions and may include recommendations, including those intended to result in improved oversight, greater transparency, or increased availability of beneficial financial products and services in the marketplace. The Department has determined quarterly reporting of complaints is the necessary frequency to ensure adequate monitoring of trends while ensuring the reporting requirement is not unduly burdensome. It is necessary to provide 30 calendar days past the end of each quarter so covered persons have sufficient time to compile the information required for each report.

Proposed subdivision (h)(1) requires each report to include the covered person's name, the date, and the reporting quarter. This information is reasonably necessary to identify the covered person and the complaints covered by the report.

Proposed subdivision (h)(2) requires each report to include the covered person's designated email address for receiving requests from the Department regarding consumer complaints. The email address must be accessible by the officer with primary responsibility for the complaint process and must be updated with the Department within five calendar days of a change. This requirement is reasonably necessary for the Department to be able to contact the covered person regarding the report. Five days to update the Department with a new designated email address is reasonably necessary because a longer timeframe could prevent the covered person from receiving timely communications from the Department regarding consumer complaints, and a shorter timeframe may be difficult to comply with during the holidays, such as Thanksgiving, where offices may be closed for four consecutive days.

Proposed subdivision (h)(3) requires each report to include the total number of complaints received. This information is reasonably necessary for the Department to compare the number of complaints received by each covered person with the number of complaints received by other similarly sized covered persons within the same industry during the specified reporting period; this could help the Department determine which entities require greater monitoring. The information would also allow the Department to compare the number of complaints

received by the same covered person over various reporting periods, which could help identify the cause of any increase in complaints.

Proposed subdivisions (h)(4), (h)(5), and (h)(6) require each report to include the total number of complaints for which a final decision was issued within 15 calendar days after receiving the complaint, between 16 and 60 calendar days after receiving the complaint, and more than 60 calendar days after receiving the complaint. Proposed subdivision (h)(7) requires each report to include the total number of complaints for which a final decision was not issued. This information is reasonably necessary for the Department to determine the covered person's compliance with the required timeframes for responding to complaints in Section 1072, subdivision (e).

Proposed subdivision (h)(8) requires each report to include the total number of complaints denied. This information is reasonably necessary for the Department to determine the frequency at which the covered person is denying complaints, which may be an indication of whether the covered person is fully complying with the rules requiring investigation and resolution.

Proposed subdivision (h)(9) requires each report to include the total number of complaints resulting in a partial refund or account adjustment. This information is reasonably necessary for the Department to determine the frequency at which the covered person is providing a partial refund or account adjustment as the remedy, which may be an indication of whether the covered person is fully complying with the rules requiring investigation and resolution.

Proposed subdivision (h)(10) requires each report to include the total number of complaints resulting in a full refund or account adjustment. This information is reasonably necessary for the Department to determine the frequency at which the covered person is providing a full refund or account adjustment as the remedy, which may be an indication of whether the covered person is fully complying with the rules requiring investigation and resolution.

Proposed subdivision (h)(11) requires each report to include, regarding each complaint for which a final decision was issued more than 15 calendar days after receipt, an explanation of why the final decision was not issued within 15 days. This information is reasonably necessary for the Department to determine whether the covered person is complying with the required timelines and delaying its responses without sufficient justification.

Proposed subdivision (h)(12) requires each report to include, for each complaint where a final decision was not issued, an explanation of why a final decision was not issued. This information is reasonably necessary for the Department to examine the reasons why the covered person was unable to provide final decisions to all complainants and determine whether the covered person is fully complying with the rules requiring investigation and resolution.

Proposed subdivision (h)(13) requires each report to include the number of complaints received for complaint types (A) through (Q).

Items (A), (B), (C), and (D) are reasonably necessary for the Department and the public to determine which entities may need improvement or corrective action based on the number of complaints received; this could help the Department determine which entities require greater monitoring.

Items (E) through (N) are reasonably necessary to ensure the report captures several common issue types identified by more than 1,000,000 complaints in the CFPB's Consumer Complaint Database<sup>28</sup>; this information will help the Department prioritize problem areas and more effectively supervise covered persons through focused regulatory action.

Item (O) requires the quarterly complaint report to include any other complaint types for which the covered person received at least 25 unique complaints from different complainants regarding the same issue during the immediately preceding calendar year; this is reasonably necessary to ensure the reports include up-to-date information regarding the most common, most recent complaint types. As financial products and services evolve, the types of complaints regarding those financial products and services will also change. It is therefore necessary to require reporting where there are at least 25 unique complaints regarding the same issue in the immediately preceding year; this is, on average, just over 2 complaints per month regarding the same issue and a recurring problem with sufficient frequency to require reporting. The requirement to only include these additional complaint types after the covered person's first full calendar year of reporting is reasonably necessary to ensure covered persons are not required to track complaints prior to the effective date of these rules or the commencement of their operations.

Items (P) and (Q) require the quarterly complaint report to provide the total number of duplicative complaints from the same complainant and the total number of complaints submitted by individuals without authority to act on the consumer's behalf; the report must exclude these numbers from the counts for Items A through O. It is reasonably necessary to exclude these complaints from the other complaint types to ensure the quarterly report provides more accurate information about the covered person's performance during the reporting period.

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<sup>28</sup> <[https://www.consumerfinance.gov/data-research/consumer-complaints/search/?dataNormalization=None&dateRange=3y&date\\_received\\_max=2021-12-21&date\\_received\\_min=2018-12-21&searchField=all&tab=Map](https://www.consumerfinance.gov/data-research/consumer-complaints/search/?dataNormalization=None&dateRange=3y&date_received_max=2021-12-21&date_received_min=2018-12-21&searchField=all&tab=Map)> [as of Dec. 22, 2021].

Proposed subdivision (h)(14) requires each report to include any patterns of complaints identified by the officer responsible for the complaint process and a summary of all corrective action taken by that officer to provide appropriate remedies to consumers and to prevent recurring problems. This provision is reasonably necessary to demonstrate compliance with Section 1072(c)(3) during the reporting period.

Proposed subdivision (h)(15) requires each report to include a summary of any steps taken by the covered person to address discrimination that may have occurred during the complaint process. This provision is reasonably necessary to demonstrate compliance with Section 1072(g) during the reporting period.

**Section 1073:** Financial Code section 90008, subdivision (a) requires rules establishing reasonable procedures for covered persons to provide a timely response to consumer inquiries. To ensure compliance with this statutory requirement, proposed Section 1073 sets forth standards for covered persons to include in their policies and procedures regarding consumer inquiries. Generally, these standards for inquiries are less stringent than those for complaints because, by definition, inquiries (a question or request for information, interpretation, or clarification) do not rise to the level of a complaint (expression of dissatisfaction) and because answering consumers' questions should be an everyday part of customer service. The rule is reasonably necessary to ensure covered persons have a system in place to respond to inquirers and that their policies and procedures are updated to include requirements in these proposed rules. The rule is also reasonably necessary to ensure a covered person's response to all issues is provided in a timely manner.

The introductory paragraph to Section 1073 states that service providers and affiliates shall not be responsible for responding to inquiries or for developing and implementing these policies and procedures, unless directed by the principal party offering the financial product or service. This provision is reasonably necessary to clarify the obligations of each type of covered person with respect to the processes and procedures required in Section 1073. Without this provision, it would be unclear which type of covered person is responsible because Financial Code section 90005, subdivision (f) defines "covered person" to include any of the following: 1) any person that engages in offering or providing a consumer financial product or service to a resident of this state, 2) any affiliate of a person described in this subdivision if the affiliate acts as a service provider to the person, and 3) any service provider to the extent that the person engages in the offering or provision of its own consumer financial product or service. This provision is also necessary to help ensure the principal party offering the financial product or service maintains effective control over the handling of inquiries and any development of policies and procedures by affiliates and service providers regarding inquiries.

**Section 1073, subdivision (a):** Proposed subdivision (a) requires the covered person to maintain a telephone number for inquirers to file inquiries orally with a live representative

during regular business hours or to leave a voicemail message for a call back within 24 hours. These provisions are reasonably necessary to make the inquiry process widely available to inquirers, including those without access to the internet or electronic communication and those who prefer other means of communication. It is necessary for the live representative to be available during regular business hours because that is when covered persons are open for business and most likely to receive calls from inquirers. The option to have inquirers leave a voicemail message for a call back is necessary to ensure the consumer's need to receive a timely response to an inquiry does not unduly burden the covered person, who needs to make a live representative available to receive the inquiry. It would be overly burdensome to require live representatives, who may be unavailable while helping other customers, to take each call. Twenty-four hours is a reasonable amount of time for a call back; this is the recommended timeframe for most business professionals to return calls<sup>29</sup> and will not significantly delay the consumer's filing of an oral inquiry.

**Section 1073, subdivision (b):** Proposed subdivision (b) requires the covered person to review and evaluate each inquiry to determine whether the inquiry should be handled as a complaint. If the inquirer indicates any dissatisfaction with a financial product or service or alleges any mistake or wrongdoing by the covered person or a third party, the rule requires the inquiry to be handled as a complaint using the process described in Section 1072. This provision is reasonably necessary because, by definition, inquiries do not rise to the level of a complaint. This provision is also reasonably necessary to clarify the procedure that should be followed in situations where a consumer inquiry later becomes a complaint and to ensure covered persons do not attempt to characterize a consumer complaint as an inquiry to avoid the more stringent requirements in Section 1072.

**Section 1073, subdivision (c):** Proposed subdivision (c)(1) requires the procedures to require the covered person to respond to all issues raised by each inquiry within 15 calendar days after receiving the inquiry, in the same format in which the inquiry was made. This timeframe is reasonably necessary because it mirrors the timeframe required by the CFPB at the federal level for covered persons to respond to consumer complaints. According to the CFPB, companies are generally able to provide a response within 15 days<sup>30</sup>; it is therefore reasonable to expect covered persons to also respond to inquiries, which are generally less complex, within 15 days. Although consumer groups recommend a much shorter 3 to 5 business day timeframe for covered persons to resolve consumer complaints and inquiries<sup>31</sup>, there is no data

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<sup>29</sup> <<https://www.voicemailoffice.com/news/business-voicemail-etiquette-ii-returning-calls/>>, <<https://telzio.com/blog/business-voicemail-greetings>>, <<https://smallbiztrends.com/2021/07/business-voicemail-greeting.html>>, <<https://blog.hubspot.com/sales/sales-voicemail-tips-that-guarantee-callbacks>>, <<https://www.clevelandmetroschools.org/Page/4351>>.

<sup>30</sup> <<https://www.consumerfinance.gov/complaint/process/>> [as of Dec. 22, 2021].

<sup>31</sup> Letter from Consumer Reports to the Department, dated March 2, 2021, pages 11 and 16.

demonstrating this would allow sufficient time for covered persons to respond. In fact, the comments from industry indicate such a timeframe would be too short, overly burdensome, and not feasible in practice.<sup>32</sup> Therefore, the Department has determined 15 days to be a reasonable and rational choice. It is necessary for the response to be in the same format in which the inquiry was made to ensure the response is consistent with consumers' expectations; a consumer is more likely to expect a response in the same format rather than, for example, a telephone response to an inquiry submitted in writing.

Proposed subdivision (c)(2) permits a covered person to respond to subsequent, duplicative inquiries from the same inquirer with a notice stating there will be no response because the inquirer previously submitted the same inquiry regarding the same issue, received a response, and provided no new information in the subsequent, duplicative inquiry. This provision is reasonably necessary to limit the scope of the inquiry process to actual inquiries in need of resolution and to exclude repeat inquiries from the same inquirer which the covered person has already resolved.

Proposed subdivision (c)(3) requires the covered person to retain copies of all written inquiries and all written responses for at least five years from the date the inquiry was received. This provision is reasonably necessary to protect the covered person in the event of duplicate inquiries and to facilitate the Department's review during regulatory examinations. The five-year timeframe is reasonably necessary to ensure the covered person maintains records at least one year past the expiration of the four-year time limit in Financial Code section 90014 for bringing a civil action under the CCFPL; this additional year gives a margin of error, so the covered person does not inadvertently delete records before the statute of limitations expires.

**Section 1073, subdivision (d):** Proposed subdivisions (d)(1) through (d)(5) require the covered person to track the number of inquiries received for each of the following categories: 1) specific questions regarding the cost of the product or service to the inquirer, 2) specific questions regarding fees and surcharges imposed on the inquirer, 3) specific questions regarding how the inquirer may use the product or service, 4) specific questions regarding how the inquirer can access funds, and 5) specific questions regarding how the inquirer may obtain or qualify for a product or service. These provisions are reasonably necessary to help the covered person identify problem areas that, while allowable under the contract, may need improvement. For example, if the covered person receives ten separate inquiries regarding the same specific issue – how to access funds – and these questions do not rise to the level of a complaint, the covered person may need to provide clearer or more detailed disclosures to consumers regarding the

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<sup>32</sup> Letter from the American Financial Services Association to the Department, dated September 17, 2021, page 2.



procedures to access funds. These category types are reasonably necessary to track because consumer groups have identified them as common issues or problems faced by consumers.<sup>33</sup>

Proposed subdivision (d)(6) requires the covered person to track the number of inquiries received in any other category for which the covered person received at least 25 inquiries from different inquirers regarding the same issue or problem during the immediately preceding calendar year. This provision is reasonably necessary to identify the most common and recent types of inquiries. As financial products and services evolve, the types of inquiries from consumers regarding those financial products and services will also change. It is necessary to require tracking where there are at least 25 unique inquiries regarding the same issue in the immediately preceding year; this is, on average, just over 2 inquiries per month regarding the same issue and a recurring problem with sufficient frequency to trigger the requirement to track. The requirement to only include these inquiry types after the covered person's first full calendar year of reporting is reasonably necessary to ensure covered persons are not required to track inquiries prior to the effective date of these rules or the commencement of their operations.

**Section 1073, subdivision (e):** Proposed subdivision (e) requires the process for responding to inquiries to be administered without discrimination. This provision is reasonably necessary for the same reasons the complaint process needs to be administered without discrimination: to ensure all inquirers are equally protected by these rules. To help ensure fairness to all inquirers, the Department drafted this rule to prohibit the same types of discriminatory conduct the Legislature has already determined to be impermissible for employers in Government Code section 12940, subdivision (a), as well as any other discriminatory basis prohibited by law.

**Section 1073, subdivision (f):** Proposed subdivision (f) requires all covered entities to submit to the Department an annual report regarding inquiries. The report must be prepared for each calendar year, verified by an officer authorized to act on behalf of the covered person, and filed with the Department no later than 30 days after the end of each calendar year. It is reasonably necessary to require annual reporting of inquiries to ensure accountability of each covered person and to provide information for the Department's annual report required by Financial Code section 90018, which may include recommendations, including those intended to result in improved oversight, greater transparency, or increased availability of beneficial financial products and services in the marketplace. The Department has determined annual reporting of inquiries is necessary for the Department to properly monitor trends while ensuring the reporting requirement is not unduly burdensome for covered persons. The Department has

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<sup>33</sup> See Letter from Consumer Reports to the Department, dated March 2, 2021, page 16; Letter from Consumer Coalition to the Department, dated September 17, 2021, page 15.

determined 30 calendar days past the end of the calendar year is reasonably necessary to provide sufficient time for covered persons to compile the information required in each report.

Proposed subdivision (f)(1) requires the report to include the covered person's name, the date, and the reporting year. This information is reasonably necessary to identify the covered person and the inquiries covered by the report.

Proposed subdivision (f)(2) requires the report to include the total number of inquiries received. This information is reasonably necessary for the Department to compare the number of inquiries received by each covered person with the number of inquiries received by other similarly sized covered persons within the same industry during the specified reporting period; this could help the Department determine which entities require greater monitoring. The information would also allow the Department to compare the number of inquiries received by the same covered person over various reporting periods, which could help identify the cause of any increase in inquiries.

Proposed subdivisions (f)(3) and (f)(4) require the report to include the total number of inquiries for which a response was provided within 15 calendar days of receiving the inquiry and more than 15 calendar days after receiving the inquiry. Proposed subdivision (f)(5) requires the report to include the total number inquiries for which a response was not provided. This information is reasonably necessary for the Department to determine the covered person's compliance with the required timeframes for responding to inquiries in Section 1073(c)(1).

Proposed subdivision (f)(6) requires the report to include, regarding each inquiry for which a response was provided more than 15 calendar days after receipt, a brief explanation of why the response was not provided within 15 calendar days. This information is reasonably necessary for the Department to evaluate the reasons why the covered person has not resolved, or cannot resolve, inquiries within 15 days and determine whether they are valid or whether the covered person is evading the required timeframes.

Proposed subdivision (f)(7) requires the report to include, regarding each inquiry for which a response was not provided, a brief explanation of why a response was not provided. This information is reasonably necessary for the Department to evaluate the reasons why the covered person was unable to provide a response to all inquirers and determine whether they were valid or whether the covered person has evaded the rules.

Proposed subdivision (f)(8) requires the report to include the number of inquiries received for each tracked category required by 1073(d). This information will help the Department prioritize problem areas and more effectively supervise covered persons, enforce consumer financial protection laws, and propose regulations.

**Section 1074, subdivision (a):** Financial Code section 90008, subdivision (b), requires rules establishing reasonable procedures for covered persons to provide a timely response to the

Department regarding a consumer complaint. To ensure compliance with this statutory requirement, proposed subdivision (a) sets forth standards for covered persons to include in their policies and procedures for responding to requests from the Department regarding a consumer complaint. The rule is reasonably necessary to ensure covered persons have a system in place to respond to the Department and that their policies and procedures are updated to include the requirements in these proposed rules. The rule is also necessary to ensure a covered person's response to the Department is not only timely but thorough and complete.

Proposed subdivision (a) further provides that service providers and affiliates shall not be responsible for developing and implementing these policies and procedures, unless directed by the principal party offering the financial product or service. This provision is reasonably necessary to clarify the obligations of each type of covered person with respect to the processes and procedures required in Section 1074, subdivision (a). Without this provision, it would be unclear which type of covered person is responsible because Financial Code section 90005, subdivision (f) defines "covered person" to include any of the following: 1) any person that engages in offering or providing a consumer financial product or service to a resident of this state, 2) any affiliate of a person described in this subdivision if the affiliate acts as a service provider to the person, and 3) any service provider to the extent that the person engages in the offering or provision of its own consumer financial product or service. This provision is also necessary to help ensure the principal party offering the financial product or service maintains effective control over the handling of consumer complaints received from the Department and any development of policies and procedures by affiliates and service providers regarding consumer complaints received from the Department.

Proposed subdivision (a)(1) requires a covered person to, within 15 calendar days after receiving the Department's request regarding a complaint, review and evaluate the complaint using the procedures set forth in Section 1072(c) and subject to the obligations in Section 1072(e)(3), (f), and (g), provide a written response to the Department. These provisions are reasonably necessary to ensure the covered person's standards for reviewing and evaluating a consumer complaint forwarded by the Department, including the time to respond, are no different than those for reviewing and evaluating a complaint filed directly by the complainant. This will ensure fairness to all consumers and equal treatment of consumer complaints, whether they are submitted directly to the covered person or routed through the Department.

Proposed subdivision (a)(1)(A) requires a covered person to provide in its written response to the Department a clear explanation of the final decision in plain language, including the specific reasons for the decision and a summary of the steps taken to respond to the complaint. This provision mirrors the requirement in Section 1072(e)(2) and is reasonably necessary for the same reason: to fulfill the objectives of the complaint process and to provide the complainant

and the Department with an explanation of why and how the complaint was resolved in the manner the covered person resolved it.

Proposed subdivision (a)(1)(B) requires a covered person to provide in its written response to the Department the items required in Section 1072(f) for the written record. This provision is reasonably necessary to facilitate the Department's review of the complaint and the officer's review required by Section 1072(c)(3). The necessity of each item in the written record is the same as that for Section 1072(f)(1) through (15):

Proposed subdivision (f)(1) requires the written record for each complaint to include the unique tracking number associated with the complaint. This provision is reasonably necessary to ensure the complaint can be quickly identified and to document the covered person's compliance with Section 1072(b)(1) for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(2) requires the written record for each complaint to include the name, phone number, mailing address, and e-mail address of the complainant, if provided. This provision is reasonably necessary to ensure the covered person used the correct contact information for any communications with the complainant regarding the complaint.

Proposed subdivision (f)(3) requires the written record for each complaint to include the name of the financial service or product involved. This provision is reasonably necessary where the covered person provides more than one type of financial service or product, to provide an accurate record for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(4) requires the written record for each complaint to include the name of the covered person or third party identified as the subject of the complaint. This provision is reasonably necessary to identify the individual or entity that is the subject of the complaint and provide an accurate record for the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(5) requires the written record for each complaint to include, for oral complaints, the name of the representative who documented the complaint. This provision is reasonably necessary for the covered person to hold the representative accountable and to ensure compliance with the complaint procedures as required by these rules.

Proposed subdivision (f)(6) requires the written record for each complaint to include the date the complaint was received by the covered person. This provision is reasonably

necessary to document the date the complaint was received so the covered person can calculate when the response is due.

Proposed subdivision (f)(7) requires the written record for each complaint to include the date the covered person provided an acknowledgement of receipt. This provision is reasonably necessary to document the covered person's compliance with Section 1072(b) for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(8) requires the written record for each complaint to include the dates of any investigation by the covered person. This provision is reasonably necessary to document the covered person's compliance with Section 1072(c)(1)(B) for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(9) requires the written record for each complaint to include the dates of all responses to the complainant. This provision is reasonably necessary to document the covered person's compliance with Section 1072(e) for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(10) requires the written record for each complaint to include the nature and details of the complaint. This provision is reasonably necessary to document the subject of the complaint for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(11) requires the written record to include the names of all persons who decided not to investigate the complaint and the reason an investigation was not needed. This provision is reasonably necessary to document the covered person's compliance with Section 1072(c)(1)(A) for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(12) requires the written record to include the results of any investigation. This provision is reasonably necessary to document the covered person's compliance with Section 1072(c)(1)(B) and (c)(2) for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(13) requires the written record to include any corrective action taken in response to the complaint. This provision is reasonably necessary to document the covered person's compliance with Section 1072(c)(1)(C) for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(14) requires the written record to include a copy of, or an electronic link to, all contracts, correspondence, and other relevant information upon which the covered person relied in reaching its final decision. This provision is reasonably necessary for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (f)(15) requires the written record to include a copy of all written responses and summaries of all oral responses, including an explanation of the final decision regarding the complaint. This provision is reasonably necessary to document the covered person's compliance with Section 1072(e) for both the officer's review pursuant to Section 1072(c)(3) and the Department's review during regulatory examinations.

Proposed subdivision (a)(1)(C) requires a covered person to provide in its written response to the Department any follow-up actions or planned follow-up actions by the covered person to respond to the complaint. This provision restates the requirement in Financial Code section 90008, subdivision (b)(3) and is necessary to clarify that the covered person's written response to the Department must include any follow-up actions or planned follow-up actions, in addition to the other items in proposed subdivisions (a)(1)(A) and (B).<sup>34</sup> This restatement of law is without regulatory effect because this element is statutorily required to be included in the covered person's response to the Department regarding a consumer complaint, and the Department has no discretion to adopt a different change.<sup>35</sup>

Proposed subdivision (a)(1)(D) provides the covered person with up to 45 additional calendar days to respond if the covered person provides the Department with a written update regarding the status of the complaint, the reason for the delay, and an estimate of the additional time needed to issue a response. This provision mirrors Section 1072(e)(1) and is reasonably necessary to ensure the covered person's standards for reviewing and evaluating a consumer complaint forwarded by the Department, including the time to respond, are no different than those for reviewing and evaluating a complaint filed directly by the complainant. This will ensure fairness to all consumers and equal treatment of consumer complaints, whether they are submitted directly to the covered person or routed through the Department.

Proposed subdivision (a)(2) requires the covered person to, within 10 calendar days after each follow-up request from the Department, provide a written response with all requested information. This provision is reasonably necessary to ensure covered persons provide a timely response to all follow-up requests from the Department regarding a consumer complaint. The Department has determined 10 days to be a reasonable amount of time because, for each

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<sup>34</sup> Gov. Code, § 11349, subd. (f), Cal. Code Regs., tit. 1, § 12, subd. (b)(1).

<sup>35</sup> Cal. Code Regs., tit. 1, § 100, subd. (a)(6).

follow-up request, the covered person is merely supplementing the initial written response required by subdivision (a)(1).

**Section 1074, subdivision (b):** Financial Code section 90008, subdivision (b), requires rules establishing reasonable procedures for covered persons to provide a timely response to the Department regarding a consumer inquiry. To ensure compliance with this statutory requirement, proposed subdivision (b) sets forth standards for covered persons to include in their policies and procedures for responding to requests from the Department regarding a consumer inquiry. The rule is reasonably necessary to ensure covered persons have a system in place to respond to the Department and that their policies and procedures are updated to include the requirements in these proposed rules. The rule is also reasonably necessary to ensure the covered person's response to the Department is not only timely but thorough and complete.

Proposed subdivision (b) further provides that service providers and affiliates shall not be responsible for responding for developing and implementing these policies and procedures, unless directed by the principal party offering the financial product or service. This provision is reasonably necessary to clarify the obligations of each type of covered person with respect to the processes and procedures required in Section 1074, subdivision (b). Without this provision, it would be unclear which type of covered person is responsible because Financial Code section 90005, subdivision (f) defines "covered person" to include any of the following: 1) any person that engages in offering or providing a consumer financial product or service to a resident of this state, 2) any affiliate of a person described in this subdivision if the affiliate acts as a service provider to the person, and 3) any service provider to the extent that the person engages in the offering or provision of its own consumer financial product or service. This provision is also necessary to help ensure the principal party offering the financial product or service maintains effective control over the handling of consumer inquiries received from the Department and any development of policies and procedures by affiliates and service providers regarding consumer inquiries received from the Department.

Proposed subdivision (b)(1) requires a covered person to, within 15 calendar days after receiving the Department's request regarding an inquiry, review and evaluate the inquiry and, subject to the obligations in Section 1073(d) and (e), provide a written response to the Department addressing all issues raised by the inquiry. These provisions are reasonably necessary to ensure the covered person's standards for reviewing and evaluating a consumer inquiry forwarded by the Department, including the time to respond, are no different than those for reviewing and evaluating an inquiry filed directly by the complainant. This will ensure fairness to all consumers and equal treatment of consumer inquiries, whether they are submitted directly to the covered person or routed through the Department.

Proposed subdivision (b)(1)(A) requires a covered person to include in its written response a summary of the steps taken by the covered person to respond to the inquiry. This provision restates the requirement in Financial Code section 90008, subdivision (b)(1), and the restatement is necessary to clarify what needs to be included in the covered person’s response. This restatement of law is without regulatory effect because this element is statutorily required to be included in the covered person’s response to the Department regarding a consumer inquiry, and the Department has no discretion to adopt a different change.<sup>36</sup>

Proposed subdivision (b)(1)(B) requires a covered person to include in its written response the responses received by the covered person from the consumer. This provision restates the requirement in Financial Code section 90008, subdivision (b)(2), and the restatement is necessary to clarify what needs to be included in the covered person’s response. This restatement of law is without regulatory effect because this element is statutorily required to be included in the covered person’s response to the Department regarding a consumer inquiry, and the Department has no discretion to adopt a different change.<sup>37</sup>

Proposed subdivision (b)(1)(C) requires a covered person to include in its written response any follow-up actions or planned follow-up actions by the covered person to respond to the inquiry. This provision restates the requirement in Financial Code section 90008, subdivision (b)(3), and the restatement is necessary to clarify what needs to be included in the covered person’s response. This restatement of law is without regulatory effect because this element is statutorily required to be included in the covered person’s response to the Department regarding a consumer inquiry, and the Department has no discretion to adopt a different change.<sup>38</sup>

Proposed subdivision (b)(2) requires the covered person to, within 10 calendar days after each follow-up request from the Department, provide a written response with all requested information. This provision is reasonably necessary to ensure covered persons provide a timely response to all follow-up requests from the Department regarding a consumer inquiry. The Department has determined 10 days to be a reasonable amount of time because, for each follow-up request, the covered person is merely supplementing the initial written response required by subdivision (b)(1).

**Section 1075:** These definitions are reasonably necessary to provide the public with guidance on how to comply with Financial Code section 90008, subdivision (d)(2)(D), which excludes “nonpublic or confidential information” from the types of information a covered person must make available to the consumer.

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<sup>36</sup> Cal. Code Regs., tit. 1, § 100, subd. (a)(6).

<sup>37</sup> Cal. Code Regs., tit. 1, § 100, subd. (a)(6).

<sup>38</sup> Cal. Code Regs., tit. 1, § 100, subd. (a)(6).



In proposed subdivision (a)(1), the Department included “confidential supervisory information” in the definition of “nonpublic or confidential information,” which restates Financial Code section 90008, subdivision (d)(2)(D). This restatement of law is without regulatory effect because “confidential supervisory information” is statutorily required to be included in this definition, and the Department has no discretion to adopt a different change.<sup>39</sup>

In proposed subdivision (a)(2), the Department included “proprietary information confidentially maintained by the covered person or service provider, including trade secrets, of which the release would be damaging or prejudicial to the business concern.” This provision is reasonably necessary to clarify that, if certain elements are met, the protection of proprietary information, including trade secrets, against misappropriation by competitors outweighs the interests of consumers seeking that information. The Department chose this language to mirror Civil Code section 3426.1, subdivision (d) of the Uniform Trade Secrets Act, in which the Legislature established the required elements of a trade secret: the information must derive some independent economic value from not being generally known to the public or other competitors and must be the subject of reasonable efforts to maintain its secrecy.

In proposed subdivision (a)(3), the Department included “personal information not publicly available regarding a consumer other than the one making the request for information” in the definition of “nonpublic or confidential information.” In proposed subdivision (d), the Department further defined “personal information” to mean information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household, not including deidentified or aggregated information. In proposed subdivision (e), the Department further defined “publicly available information” to mean information lawfully made available to the public from federal, state, or local government records. These provisions are reasonably necessary to clarify that the privacy interest of one consumer in protecting his or her confidential personal information outweighs the interest of another consumer seeking that information. The Department chose these definitions to mirror the definitions of “personal information” and “publicly available information” in Civil Code section 1798.140, subdivisions (o) and (p) of the California Consumer Privacy Act, in which the Legislature deemed it necessary to create privacy rights for individuals whose personal information is maintained by certain entities.

In proposed subdivision (b), the Department excluded from the definition of “nonpublic or confidential information” any information contained in records made publicly available by the Department or information that has been publicly disclosed by an employee or agent of the Department with the authority to do so. This provision is necessary to ensure the Department can share or disclose information to the extent needed to achieve its mission and to fulfill the

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<sup>39</sup> Cal. Code Regs., tit. 1, § 100, subd. (a)(6).

purposes of the CCFPL to promote consumer welfare, fair competition, and wealth creation. The Department chose this language to mirror that adopted by the CFPB.<sup>40</sup>

In proposed subdivision (c)(1), the Department further defined “confidential supervisory information” to include any documents, materials, or records, including reports of examination, prepared by, on behalf of, or for the use of the Department or any other federal state, or foreign government agency in the exercise of regulatory oversight of a covered person or service provider, and any information derived from such documents, materials, or records. In proposed subdivision (c)(2), the Department included any communications between the Department and a covered person or service provider related to the Department’s regulatory oversight of the covered person or service provider. In proposed subdivision (c)(3), the Department included any information provided to the Department by a covered person or service provider for purposes of detecting and assessing risks to consumers and to markets, or to assess whether an entity should be considered a covered person and subject to the Department’s regulatory oversight. These definitions are necessary because the Department’s supervision, and therefore the protection of consumers, depends upon the full and frank exchange of information with covered persons regarding their operations and compliance with regulatory requirements. These provisions will provide incentives for covered persons to share with the Department certain types of supervisory information freely and with reasonable assurance that information will not be publicly disclosed. The Department chose this language to mirror the definition of “confidential supervisory information” adopted by the CFPB.<sup>41</sup>

## **VI. Economic Impact Assessment**

The Department has assessed whether and to what extent this proposed rulemaking action will affect (1) the creation or elimination of jobs within the state, (2) the creation of new businesses or the elimination of existing businesses within the state, (3) the expansion of business currently doing business within the state, and (4) the benefits of the regulation to the health and welfare of California residents, worker safety, and the state’s environment.

The requirements of this proposed rulemaking action that will have an economic impact include the following:

- Requirement for the complaint process to include specified elements,
- Requirement for the inquiry process to include specified elements,
- Requirement for the process for responding to the Department regarding consumer complaints to include specified elements,

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<sup>40</sup> 12 C.F.R. § 1070.2(f) (2013).

<sup>41</sup> 12 C.F.R. § 1070.2(i)(2), (i)(3), and (i)(4) (2013).

- Requirement for the process for responding to the Department regarding a consumer inquiry to include specified elements,
- Requirement to familiarize employees and third parties with the regulatory requirements to handle consumer complaints and inquiries,
- Requirement to maintain specific items in books and records for specified periods,
- Requirement to monitor complaints on an ongoing basis, and
- Requirement to collect, maintain, and report on specified information to the Department on an ongoing basis.

**a. The Creation or Elimination of Jobs Within the State**

To the extent a covered person is not able to use its current workforce to absorb any additional work required by these regulations, this rulemaking action may create new jobs. However, it is unclear how many jobs would be created because most covered persons already receive, evaluate, investigate, track, respond to, and monitor consumer complaints and inquiries to some degree.

The Department does not anticipate this rulemaking action will eliminate jobs. Although covered persons may face enforcement action by the Department and associated penalties if they fail to meet the standards in Financial Code section 90008 as clarified and made specific in this rulemaking action, the elimination of jobs is unlikely.

**b. The Creation of New Businesses or the Elimination of Existing Businesses Within the State**

The Department has determined this rulemaking action will not result in either the creation of new businesses or the elimination of existing businesses within the state. The rulemaking action balances the regulatory requirements against the benefits of public protection. Based on the Department’s assessment, the action does not burden businesses to the extent of eliminating them.

**c. The Expansion of Business Currently Doing Business Within the State**

The Department has determined this rulemaking action will not result in the expansion of business currently doing business within the state. The regulatory requirements on covered persons will initially require the reallocation of resources to achieve compliance with the new regulatory requirements. However, in the long term, this rulemaking action could positively impact covered persons by increasing public confidence in the financial products or services they offer or provide.

**d. The Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and State’s Environment**

The Department has determined the regulatory requirements proposed in this rulemaking action will help improve the welfare of California residents and the state's environment by requiring covered persons to develop and implement procedures to address and resolve problems or issues identified by consumers with respect to financial products and services, including the acts, omissions, decisions, conditions, and policies of the covered persons and service providers who offer or provide those financial products and services. This rulemaking action is not anticipated to benefit worker safety because it does not have any effect on worker safety.

#### **e. Finding Regarding Reports**

The Commissioner finds it is necessary for the health, safety, or welfare of the people of the state that the reporting required by this rulemaking action apply to businesses. (Gov. Code, § 11346.3, subd. (d).)

### **VII. Identification of Studies**

#### **a. Identification of Studies Relied Upon**

In proposing this rulemaking action, the Department relied on the following technical, theoretical, and empirical studies, reports, or similar documents (Gov. Code, § 11346.2, subd. (b)(3).):

- News Release, *CFPB to Hold Financial Institutions and their Service Provider Accountable* (April 13, 2012) <<https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-to-hold-financial-institutions-and-their-service-providers-accountable/>> (as of Dec. 22, 2021).
- Haendler, Charlotte and Heimer, Rawley, *The Financial Restitution Gap in Consumer Finance: Insights from Complaints Filed with the CFPB* (January 14, 2021), p. 2. <<https://ssrn.com/abstract=3766485>> (as of Dec. 22, 2021).
- [https://www.consumerfinance.gov/data-research/consumer-complaints/search/?dataNormalization=None&dateRange=3y&date\\_received\\_max=2021-12-21&date\\_received\\_min=2018-12-21&searchField=all&tab=Map](https://www.consumerfinance.gov/data-research/consumer-complaints/search/?dataNormalization=None&dateRange=3y&date_received_max=2021-12-21&date_received_min=2018-12-21&searchField=all&tab=Map)> [as of Dec. 22, 2021].
- <<https://www.consumerfinance.gov/complaint/process/>> [as of Dec. 22, 2021].

#### **b. Information provided by interested parties**

In addition, the Department has relied upon the information provided by interested parties and parties who would be subject to the proposed regulations obtained during public discussions regarding the proposed regulations. (Gov. Code, § 11346.45.) Information from interested parties include letters from the following individuals, organizations, and coalitions:

- American Financial Services Association, dated September 17, 2021.
- California Association of Collectors, dated March 8, 2021, and September 17, 2021.
- California Creditors Bar Association, dated March 8, 2021.
- California Financial Service Providers, dated March 4, 2021, and September 17, 2021.
- California Low Income Consumer Coalition, dated March 15, 2021.
- Center for Responsible Lending, dated March 15, 2021.
- Consumer Data Industry Association, dated March 5, 2021, and September 17, 2021.
- Consumer Federation of California et al., dated March 8, 2021, and September 17, 2021.
- Consumer Relations Consortium, dated March 8, 2021.
- Consumer Reports, dated March 2, 2021.
- Earnin, dated September 17, 2021.
- Eileen Newhall Consulting LLC, dated September 17, 2021.
- Electronic Transactions Association, dated September 17, 2021.
- Encore Capital Group, Inc., dated March 8, 2021, and September 13, 2021.
- FreeFrom, dated March 8, 2021.
- Gurstel Law Firm PC, dated March 4, 2021.
- INFiN, dated September 17, 2021.
- Katten Muchin Rosenman LLP, dated September 13, 2021.
- Law Offices of Paul Soter, dated September 17, 2021.
- Legal Aid Foundation of Los Angeles et al., dated March 8, 2021.
- Online Lenders Alliance, dated September 17, 2021.
- Payday Money Center, dated September 17, 2021.
- Receivables Management Association International, dated March 8, 2021.
- Student Loan Servicing Alliance, dated September 16, 2021.
- Third Party Payment Processors Association, dated September 17, 2021.

## VIII. Alternatives

**Reasonable Alternatives:** The Department has involved parties who would be subject to the proposed regulations in accordance with Government Code section 11346.45 and has incorporated suggestions on the proposed regulations that are less burdensome and equally effective at achieving the purpose of the proposed regulations. The Department is not aware of any reasonable alternatives that would be equally effective at achieving the purpose of the proposed regulations.

**Adverse Impact on Small Business:** Reducing the requirements for covered persons in the proposed rules could lessen any adverse impact on small business. However, the Department rejects these alternatives because the Commissioner has determined the requirements are

necessary to protect consumers of financial products and services and to administer the law efficiently and effectively.

**IX. Evidence Supporting an Initial Determination that the Rulemaking Action will not have a Significant Adverse Impact on Business**

The Department relies on the letters identified above in Section VII to support an initial determination that the action, after incorporating suggestions from these parties, will not have a significant adverse economic impact on business.