



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

GOVERNOR **Gavin Newsom** • COMMISSIONER **Clothilde V. Hewlett**

NOTICE OF PROPOSED RULEMAKING
UNDER THE CALIFORNIA CONSUMER FINANCIAL PROTECTION LAW:
CONSUMER COMPLAINTS AND INQUIRIES
(PRO 03-21)

TITLE 10. CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

The Department of Financial Protection and Innovation (“Department”) proposes to adopt Article 5, including sections 1070, 1071, 1072, 1073, 1074, and 1075, of Title 10, Chapter 3, Subchapter 4 of the California Code of Regulations. The proposed regulations implement, interpret, and make specific Financial Code section 90008, subdivisions (a), (b), and (d)(2)(D) of the California Consumer Financial Protection Law (“CCFPL”)¹ administered by the Department.

AUTHORITY

Financial Code section 90008.

REFERENCE

Financial Code section 90008.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action but will hold one if any interested person or authorized representative makes a written request for a hearing to the Department’s designated contact persons below, no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or authorized representative may submit written comments regarding this proposed regulatory action to the Department, addressed as follows, by postal or electronic mail:

¹ Fin. Code, § 90000 et seq.

By Postal Mail

Department of Financial Protection and Innovation
Attn: Sandra Navarro
300 S. Spring Street, Suite 15513
Los Angeles, California 90013

By Electronic Mail

Comments may be submitted electronically to regulations@dfpi.ca.gov with a copy to David.Bae@dfpi.ca.gov. Please identify the comments as PRO 03-21 in the subject line.

Written comments may be submitted until July 5, 2022.

INFORMATIVE DIGEST

Policy Statement and Specific Benefits Anticipated from Regulatory Action

On September 25, 2020, Governor Newsom signed Assembly Bill 1864² establishing the CCFPL,³ which expanded the Department's oversight authority to cover 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.⁴ Among other things, the Legislature intended for the CCFPL to protect consumers from discrimination and unfair, deceptive, and abusive acts and practices by covered persons in connection with financial products and services.⁵

The proposed regulations adopt new rules to implement, interpret, and make specific section 90008, subdivisions (a), (b), and (d)(2)(D) of the CCFPL pertaining to consumer complaints and inquiries.

Financial Code section 90008, subdivision (a) authorizes the Department to promulgate rules establishing reasonable procedures for covered persons to provide a timely response to consumers regarding complaints and inquiries.⁶ The proposed rules would help protect consumers by ensuring covered persons have written policies and procedures in place regarding the handling of complaints and inquiries.

Financial Code section 90008, subdivision (b) authorizes the Department to promulgate rules establishing reasonable procedures for covered persons to provide a timely response to the Department concerning consumer complaints and inquiries.⁷ The proposed rules would protect

² Stats. 2020, ch. 157 (A.B. 1864), § 7, eff. Jan. 1, 2021.

³ Fin. Code, § 90000 et seq.

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

⁵ Fin. Code, § 90000, subd. (b)(3).

⁶ Fin. Code, § 90008, subd. (a).

⁷ Fin. Code, § 90008, subd. (b).

consumers by ensuring covered persons have policies and procedures in place with respect to the handling of requests from the Department regarding consumer complaints and inquiries.

Financial Code section 90008, subdivision (d)(2)(D) permits covered persons to withhold nonpublic or confidential information, including confidential supervisory information, in response to a consumer request to the covered person for information regarding a consumer financial product or service.⁸ The proposed rules would help clarify this statutory provision for covered persons and consumers by defining the terms “nonpublic or confidential information” and “confidential supervisory information.”

Anticipated Benefits of the Proposed Regulations:

The broad objective of this regulatory action mirrors the Legislature’s intent in enacting the CCFPL: to strengthen consumer protections by expanding the ability of the Department to improve accountability and transparency in the California financial system, provide consumer financial education, and protect consumers from abusive financial practices, while prioritizing the prevention of unethical businesses from harming the most vulnerable populations.⁹ The proposed regulations would achieve these benefits by requiring covered persons to 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. Also, without these regulations, covered persons would not be subject to enforcement action by the Department for violating Financial Code section 90008.¹⁰

The specific benefits of these rules include enhancing 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.

Summary of Existing Laws and Regulations, and Effect of Proposed Action

Existing law requires the Department to promulgate rules establishing reasonable procedures for covered persons to provide a timely response to consumers, in writing where appropriate, regarding the consumer’s complaints against, or inquiries concerning, a covered person.¹¹

Existing law requires the Department to promulgate rules requiring a covered person to provide a timely response, in writing where appropriate, to the Department concerning a consumer complaint or inquiry, including steps that have been taken by the covered person to respond to the complaint or inquiry of the consumer, responses received by the covered person from the

⁸ Fin. Code, § 90008, subd. (d)(2)(D).

⁹ Fin. Code, § 90000, subd. (a)(4).

¹⁰ Fin. Code, § 90008, subd. (e).

¹¹ Fin. Code, § 90008, subd. (a).

consumer, and follow-up actions or planned follow-up actions by the covered person to respond to the complaint or inquiry of the consumer.¹²

Under existing law, a covered person may not be required to provide nonpublic or confidential information, including confidential supervisory information, in response to a consumer request for information concerning a consumer financial product or service.¹³

To implement these statutory provisions, this proposed regulatory action:

- Identifies entities that are exempt from the proposed rules;
- Defines terms used in the proposed rules;
- Establishes procedures for covered persons to respond to consumer complaints and to develop and implement written policies and procedures regarding the initiation of complaints, the acknowledgement of receipt of complaints, the review and evaluation of complaints, the tracking of complaints, the response to complaints, the maintenance of a written record for each complaint, the administration of the complaint process without discrimination, and the reporting of complaints to the Department;
- Establishes procedures for covered persons to respond to consumer inquiries and to develop and implement written policies and procedures regarding the initiation of inquiries, the review and evaluation of inquiries, the response to inquiries, the retention of copies of written inquiries and responses, the tracking of inquiries, the administration of the inquiry process without discrimination, and the reporting of inquiries to the Department;
- Establishes requirements for covered persons to develop and implement written policies and procedures for responding to requests from the Department regarding consumer complaints and inquiries; and
- Defines “nonpublic or confidential information,” “confidential supervisory information,” “personal information,” and “publicly available information.”

Existing Federal Regulation or Statute

Existing comparable federal regulations or statutes include:

- 12 U.S.C. section 5534(b),
- 12 U.S.C. section 5534(c)(1),
- 12 U.S.C. section 5534(c)(2)(D),
- 12 C.F.R. section 1070.2(f), and
- 12 C.F.R. section 1070.2(i).

¹² Fin. Code, § 90008, subd. (b).

¹³ Fin. Code, § 90008, subd. (d)(2)(D).

However, there are no significant differences between these federal laws, which apply to covered persons under Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act,¹⁴ and the proposed action, which applies to covered persons under the CCFPL.

Existing State Regulations

The Department evaluated the proposed regulations for consistency and compatibility with existing state regulations and has concluded these are the only regulations pertaining to covered persons under the CCFPL.

Forms Incorporated by Reference

This proposed regulatory action does not incorporate any forms by reference.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Cost or savings to any state agency: \$100,000 to implement the proposed regulations and \$500,000 in ongoing costs (these costs are absorbable within existing resources).

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has made an initial determination this proposed regulatory action will not have a significant, statewide, adverse, economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESS

This regulatory action may impact small business.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department estimates a representative covered person could incur initial costs of \$2,500 and annual costs thereafter of \$4,000 to comply with this regulatory action.

¹⁴ Pub.L. No. 111-203 (July 21, 2010) 124 Stat. 1955.

Initial costs would include the cost to develop and implement written policies and procedures, forms, consumer disclosures, and templates for responses, record-keeping, and reporting. The covered person would also incur initial costs to revise their contracts with third parties.

Ongoing costs would include the cost to review, evaluate, and investigate complaints and inquiries, to monitor the operation of the complaint process, to track complaints and inquiries, to respond to complaints and inquiries, to maintain a written record for each complaint, and to collect information and prepare reports for the Department regarding complaints and inquiries. Most of these costs would be absorbable, however, because covered persons already receive, evaluate, investigate, track, respond to, and monitor consumer complaints and inquiries to some degree.

Ongoing costs would also include the cost to provide a live representative to receive oral complaints and inquiries and provide status updates; however, these costs should be absorbable as most covered persons already have staff on hand to perform these tasks, which are a part of everyday customer service. Moreover, the regulations mitigate this cost by permitting covered persons to provide complainants and inquirers with the option to leave a voicemail message for a call back within twenty-four hours, which should obviate the need to hire additional staff.

The only other ongoing cost would be the cost to provide translation and interpretation services to consumers for whom the covered person has negotiated a contract primarily in one of five languages; however, this cost would be absorbable because covered persons subject to this requirement would already be providing translations to their customers.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The Department has determined:

- The proposed action may create jobs but will not eliminate jobs within California;
- The proposed action will not create new businesses or eliminate existing businesses within California;
- The proposed action will not affect the expansion of businesses currently doing business within California; and
- The proposed action will benefit the health and welfare of California residents, worker safety, and the state's environment.

BUSINESS REPORTING REQUIREMENT

The Department has determined it is necessary for the health, safety, or welfare of the people of this state that the reports required in this regulatory action apply to businesses.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF THE NOTICE, STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE

The Department will make the entire rulemaking file, including this notice, the initial statement of reasons, and the proposed text of the regulations, available for inspection and copying throughout the rulemaking process at the address provided, and from the persons identified, in the "Contact Persons" section of this notice.

AVAILABILITY OF THE DOCUMENTS ON THE INTERNET

The notice, initial statement of reasons, and proposed text are also available on the Department's Web site at www.dfpi.ca.gov. To access the documents from the Department's Web site, click on "Laws and Regulations" under the "Licensees" tab at the top of the home page, then on the "Regulations / Rulemaking" link, and then on the "California Consumer Financial Protection Law" link.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if scheduled, and considering all timely and relevant comments, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days prior to adopting the revised regulations. Requests for a copy of any modified regulation(s) must be addressed to the contact persons named in this notice. The Department will accept written comments on the modified regulations for at least 15 days after the date they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

The Final Statement of Reasons will be available when completed. Copies may be requested from the contact person named in this notice or accessed on the website listed above.

CONTACT PERSONS

Please direct all inquiries concerning the proposed rulemaking action (including requests for copies of the proposed text of the regulations, the initial statement of reasons, or the modified text of the regulation, and questions regarding the timelines or rulemaking status) to:

Sandra Navarro
Department of Financial Protection and Innovation
300 S. Spring Street, Suite 15513
Los Angeles, CA 90013
Telephone: (213) 897-3432
e-mail: regulations@dfpi.ca.gov

The backup contact person for these inquiries is:

David Bae
Department of Financial Protection and Innovation
300 S. Spring Street, Suite 15513
Los Angeles, CA 90013
Telephone: (213) 554-2962
e-mail: David.Bae@dfpi.ca.gov

Dated: May 20, 2022

Sacramento, California