



July 5, 2022

VIA E-MAIL (REGULATIONS@DFPI.CA.GOV)

Department of Financial Protection and Innovation
Attention: Sandra Navaro
300 S. Spring Street, Suite 15513
Los Angeles, CA 90013

Re: ***Notice of Proposed Rulemaking Under the California Consumer Financial Protection Law: Consumer Complaints and Inquiries (PRO 03-21)***

Dear Ms. Navaro:

CTIA¹ respectfully submits these comments in response to the Department of Financial Protection and Innovation's (Department's) Notice of Proposed Rulemaking on consumer complaints and inquiries in the above-referenced docket dated May 20, 2022 (NPRM).

Background and Overview

CTIA and its member companies are committed to protecting wireless consumers. The wireless marketplace is highly competitive, and wireless providers retain customers in significant part by ensuring customer satisfaction. To this end, the wireless industry has taken the initiative to establish baseline levels of consumer service for wireless providers through CTIA's Consumer Code for Wireless. All signatories to the Consumer Code (which includes all nationwide wireless providers and a large proportion of smaller providers) commit, among other things, to respond to consumer inquiries and complaints received from government agencies within 30 days and

¹ CTIA – The Wireless Association® (CTIA) (www.ctia.org) represents the U.S. wireless communications industry, and the companies throughout the mobile ecosystem that enable Americans to lead a 21st-century connected life. Its members include wireless carriers, device manufacturers, suppliers, and app and content companies. CTIA advocates at all levels of government for policies that foster continued wireless innovation and investment. It also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry, and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.



to provide consumers with ready access to customer service through a variety of means including toll-free telephone numbers and online access.²

Data show that wireless customers are more satisfied with their wireless service than with the economy as a whole—and at least as satisfied with their wireless service as they are with many other major consumer services or products. For example, the overall American Customer Satisfaction Index (ACSI) since 2000 ranges from a low of 72 to high of 77;³ wireless industry satisfaction is generally within or above that range.⁴ Wireless providers perform as well in ACSI as providers in other major service sectors, including airlines, hotels, and health insurance, and as well as products such as household appliances and electronics, too.⁵

Wireless providers are, of course, primarily in the business of providing consumers with wireless communications services; they are *not* primarily in the business of providing financial products or services. Yet the definitions in the California Consumer Financial Protection Law (CCFPL) are broad enough that certain products offered by wireless providers or their affiliates and agents (for example, installment payment plans for wireless devices such as cellphones) could potentially be wrongly interpreted as within the law’s scope.⁶ The Legislature was clear, however, that the CCFPL is not intended to regulate retailers that extend credit to consumers for the acquisition of nonfinancial goods or services.⁷ This is consistent with other laws and

² See generally CTIA, *Wireless Industry Commitment: Consumer Code for Wireless Service*, <https://www.ctia.org/the-wireless-industry/industry-commitments/consumer-code-for-wireless-service>.

³ See ACSI, *National ACSI Q1 2022: Decline in Customer Satisfaction Continues but at a Slower Pace*, ACSI Data Show (May 10, 2022), <https://www.theacsi.org/news-and-resources/press-releases/2022/05/10/press-release-national-acsi-q1-2022/>.

⁴ See ACSI, *Wireless Phone Service* (2022), <https://www.theacsi.org/industries/telecommunications-and-information/wireless-phone-service/>.

⁵ See ACSI, *Airlines* (2022), <https://www.theacsi.org/industries/travel/airlines/>; ACSI, *Hotels* (2022), <https://www.theacsi.org/industries/travel/hotels/>; ACSI, *Health Insurance* (2021), <https://www.theacsi.org/industries/finance-and-insurance/health-insurance/>; ACSI, *Household Appliances and Electronics*, <https://www.theacsi.org/industries/manufacturing/household-appliances-and-electronics/>.

⁶ See Cal. Financial Code §§ 90005(f) (a “covered person” is any entity that offers or provides a “consumer financial product or service to a resident of this state”); 90005(k) (“financial product or service” is, *inter alia*, extending “credit”); 90005(g) (“credit” is “the right granted by a person by another person to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for those purchases”).

⁷ Cal. Financial Code § 90006(e)(1)(A).



regulations governing consumer financial products and services that provide similar exemptions.⁸

The Legislature’s decision not to apply the strictures of the CCFPL to entities that are primarily selling nonfinancial goods and services serves important purposes. First, it avoids the consumer confusion that would certainly ensue if companies, like wireless providers, with national, or even regional, operations were required to create and promote on their websites’ homepages a detailed and specific consumer inquiry and complaint process that is inapplicable to the primary services or goods that the company sells. Second, it appropriately ties the scope of the requirements (as well as the associated compliance burdens)⁹ to the law’s intended purpose—as the Department put it, to “protect *California consumers* from unfair, deceptive, and abusive practices by *financial services companies*.”¹⁰

The extension of “credit” by wireless providers and their affiliates and agents—which is solely for the purchase of wireless services and associated products—is precisely the type of activity that the Legislature intended to place outside the scope of the CCFPL, and therefore of the regulations proposed in the NPRM.¹¹ However, to the extent that the Department finds that wireless providers are subject to the regulations proposed in the NPRM, the Department should tailor the proposed rules more carefully to avoid consumer confusion and appropriately balance the requirements’ benefits and burdens.

Wireless Providers Are Exempt from the Proposed Regulations

The NPRM’s proposed regulations would apply to all “covered persons or service providers” as defined in the CCFPL.¹² The CCFPL defines “covered person or service provider” very broadly, to include any entity that provides “consumer financial services or products,” which

⁸ See *infra* Section II.

⁹ Indeed, as some commenters have noted, the rules proposed in the NPRM may even be more burdensome than necessary for the regulation of companies that primarily provide consumer financial products and services. See, e.g., Comment Letter of Consumer Data Industry Association, PRO 03-21 (Sept. 17, 2021); Comment Letter of Online Lenders Alliance, PRO 03-21 (Sept. 17, 2021).

¹⁰ Initial Statement of Reasons at 1 & n.4, citing Sen. Banking and Financial Institutions Com., Rep. on Assem. Bill No. 1864 (2019-2020 Reg. Sess.) as amended Aug. 25, 2020, at 4 (emphasis added).

¹¹ In addition to the exclusion of authority in section 90006(e)(1)(A), as discussed below, the CCFPL also specifically exempts the provision of access to telecommunications networks from the definition of “financial service or product.” *Id.* § 90005(k)(13)(B); see *infra* Section II.

¹² See, e.g., Proposed Rule 1072.



encompasses any entity that extends “credit” for the payment of any debt.¹³ As noted above, wireless service providers and their affiliates and agents are not primarily in the business of offering consumer financial products or services. Rather, they are in the business of providing wireless communications service—a service that is not covered by the CCFPL. However, the definition of “credit” in the CCFPL is broad and, given the recent passage of the CCFPL, the precise scope of the provision is not yet clear. Absent the legislative intent, it might be possible to construe “credit” to cover certain products or services that wireless providers offer, such as installment payment plans for wireless devices (*e.g.*, cellphones).¹⁴

The text of the CCFPL makes clear, however, that the Legislature did not intend for the legislation (or its implementing rules) to apply in such cases. Specifically, the CCFPL provides that the Department’s authority does not extend to the “bona fide extension of credit by a merchant, retailer, or seller of nonfinancial goods and services to a consumer for the acquisition of a nonfinancial good or service.”¹⁵ The CCFPL provides three conditions for the exemption to apply, all of which apply to the goods or services offered by wireless service providers: (i) the “credit” extended by wireless providers to consumers for the acquisition of wireless service or associated products (such as cellphones) does not “significantly exceed the fair market value of the nonfinancial good or service provided”; (ii) wireless providers do not sell or assign the debt (except potentially delinquent debts for collection, which the statute allows); and (iii) wireless providers do not “regularly extend credit” as defined in the federal Truth in Lending Act.¹⁶

In addition, the Legislature excluded from the definition of “financial product or service” the “provision, by a person, of . . . connections to a telecommunications system or network.”¹⁷ Wireless providers are primarily in the business of providing connections to a telecommunications system or network and thus are rightly excluded.

¹³ *Id.* § 90005(f).

¹⁴ Indeed, the definition of “credit” is so vague that an overly expansive reading could sweep in any service for which customers pay in arrears (such as postpaid wireless service, or even professional services such as medical and legal services)—which is precisely why the exemption for “credit” extended only for the purchase of nonfinancial products or services (as well as the exclusion of telecommunications service offerings from the definition of “financial product or service,” as discussed below) is crucial for preventing the CCFPL and associated regulations from applying well beyond their intended scope.

¹⁵ Cal. Financial Code § 90006(e)(1)(A).

¹⁶ *Id.* The third prong of the test must refer to the extension of credit in the context of *financial* services or products, or else the entirety of Section 90006(e)(1)(A) would be rendered a nullity.

¹⁷ Cal. Financial Code § 90005(k)(13)(B).



These provisions serve to cabin the Department’s authority appropriately to companies that sell consumer financial products or services, which has multiple beneficial effects. First, as noted above, it limits the potential for consumer confusion by avoiding scenarios where companies must provide special disclosures or treatment—such as the particular complaint and inquiry requirements discussed in this docket—that apply only to a small subset of the company’s offerings and *not* to the company’s principal offerings. Second, it limits the impact of regulations intended for financial services companies on companies that primarily provide nonfinancial goods and services.

The provision of such exemptions is consistent with other similar consumer financial protection regulations that provide exemptions for the incidental provision of credit for nonfinancial services and products. For example, the regulations implementing the federal Equal Credit Opportunity Act provide an exemption from several requirements for entities that provide “incidental credit” associated with the provision of nonfinancial goods and services.¹⁸ Similarly, the federal Consumer Financial Protection Bureau (CFPB) recognizes that ancillary arrangements incidental to an unrelated service should be excluded from the reach of regulations that were intended to target specific harms of financial industry actors.¹⁹ Moreover, the California Financing Law specifically exempts from licensure persons engaging in credit sales.²⁰

¹⁸ See, e.g., *Williams v. AT&T Wireless Servs.*, 5 F. Supp. 2d. 1142, 1147 (W. Dist. Wash. 1998).

¹⁹ For example, the CFPB’s Official Interpretation of its Regulation M (which implements the Consumer Leasing Act) states that financial transactions normally within scope of the regulation are nonetheless exempt if they are merely incidental to other services. See Supplement I to 12 C.F.R. § 1013 (Section 1013.2, at 2(e)(7)):

Leases of personal property incidental to a service. The following leases of personal property are deemed incidental to a service and thus are not subject to the regulation:

- i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.
- ii. Security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home and in some cases to provide fire protection.
- iii. Propane gas service where the consumer must lease a propane tank to receive the service.

²⁰ Cal. Fin. Code § 22054.



The foregoing establishes that wireless providers qualify for multiple exemptions under the CCFPL and exemplify just the type of ancillary providers of credit that the Legislature intended to exempt.

If Applied to Wireless Providers, the Proposed Regulations Must Be Modified to Avoid Consumer Confusion and More Appropriately Balance Burdens and Benefits

To the extent that the Department nonetheless concludes that the proposed regulations apply to wireless service providers, the Department would need to modify the proposed regulations to avoid consumer confusion, anomalous results, and excessive burdens.

The proposed regulations are clearly drafted with the intention of regulating companies that primarily provide financial products and services, and would have to be tailored for companies that are primarily in other lines of business, such as wireless providers. For example, companies that are not primarily in the business of providing financial products or services should not be required to display the online complaint form regarding financial products or services on the “main page of the website” for the entity,²¹ but instead on webpages where consumer financial products or services are offered. This will avoid consumer confusion about the purpose of complaint forms and prevent the application of the regulation to services outside the Department’s authority.

Similarly, the proposed rule would make it unduly complicated for entities such as wireless providers that primarily provide nonfinancial services to effectively communicate to customers when—and with respect to what issues—it would be appropriate to complain to the provider, as provided in the proposed rules, as opposed to other state and federal agencies such as the California Public Utilities Commission, the Department, the state Attorney General, the Federal Trade Commission, the Consumer Financial Protection Bureau, or the Federal Communications Commission.

Similar problems are posed by the application of the proposed rules to companies, such as wireless providers, with a national or global scope. The proposed rules would, of necessity, apply only to complaints or inquiries from California consumers, but implementation of the proposed rules could result in many non-California consumers attempting to avail themselves of the processes, further magnifying consumer confusion and impeding consumers’ access to other processes that would meet their needs.

In addition, many of the proposed complaint resolution and mandated disclosure processes differ from those already provided for by existing law or policies and therefore would be

²¹ Proposed § 1072(a)(4).



unnecessary and confusing to consumers. The proposed rules should be revised to exempt complaints or inquiries that are subject to existing legal processes. For example, although the proposed rules exempt credit reporting agencies under the Fair Credit Reporting Act (FCRA) in Section 1070(a), the FCRA also prescribes dispute resolution processes for furnishers. Certain financial institutions are subject to dispute resolution procedures under Regulation E.²² Competing complaint resolution procedures would significantly burden wireless providers and complicate existing processes for little to no consumer benefit. Similarly, federal law mandates certain disclosure when an adverse action is taken in relation to a credit product, including special disclosures when an action is taken based on information from a credit reporting agency. These relevant obligations already require the identification of federal regulators responsible for enforcing the underlying consumer protections as well as regulated entities with obligations triggered by consumer notice. Requiring a Section 1072(a)(3) notice with these mandated disclosures, even though they have no real nexus with the issues the Department is seeking to address, could result in increased consumer confusion and misdirected complaints and inquiries, ultimately undermining existing consumer protection laws.

The potential burdens of many of the proposed requirements also appear to be excessive—particularly if applied to companies that do not primarily provide financial products or services. Although the NPRM asserts that any less-burdensome alternatives would not be as effective at achieving the NPRM’s goals as the proposed regulations,²³ there are numerous ways that the proposed rules would create unneeded burdens and unnecessary costs. For example, the proposed regulations would require entities complying with them to create a specific complaint intake form; establish a specific telephone number with voicemail; create a system for providing written (including postal) acknowledgements, 5-day status updates upon request, and 15-day final decision requirements; and provide detailed disclosures, including tracking and documenting the names of individuals reviewing issues. Further, the written acknowledgement requirements are unusually prescriptive. The tracking provisions are unreasonable and unwarranted given the abbreviated 15-day response requirement. And the proposed rules ignore existing provider processes for responding to complaints and make no showing that these are failing to meet consumers’ needs. For example, for wireless providers, the CTIA Wireless Consumer Code already requires participating wireless providers to respond in writing to state or federal administrative agencies within 30 days of receiving written consumer complaints from any such agency.²⁴

²² Compare, e.g., the 15-day investigation period in Section 1072(e)(1) with the investigation periods in 12 C.F.R. § 1005.11.

²³ NPRM at 7.

²⁴ See fn. 1.



Finally, while the proposed regulations generally make clear an appropriate intent to apply only to consumer financial products and services under the Department's authority,²⁵ for the avoidance of any doubt, the regulations should be edited to clarify, wherever necessary, that they apply only to financial products and services, consistent with the Department's statutory authority. For example, proposed Section 1073(d) should be modified to make clear that only questions regarding true financial products and services must be tracked as "inquiries," and proposed Section 1072(h)(13)(N) should be modified to make clear that it pertains to complaints only about denial of access to a financial product or service, not any other product or service offered by the covered person.

CTIA appreciates the opportunity to comment on the proposed rules in this proceeding. We encourage you to contact us if you have any questions regarding the wireless industry.

Sincerely,

Benjamin J. Aron
Assistant Vice President, State Regulatory
Affairs

cc: David Bae (@dfpi.ca.gov)

²⁵ For example, the proposed definitions of "complaint" and "inquiry" both specify that they cover only communications pertaining to financial products or services. See Proposed Section 1071. *But see* Proposed Section 1073(d) (requiring covered persons to track inquiries regarding "the cost of the product or service to the inquirer," discussed below).