

July 5, 2022

Department of Financial Protection and Innovation  
Attn: Sandra Navarro  
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Los Angeles, California 90013  
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RE: Comments Regarding Proposed Rulemaking Under the California Consumer Financial Protection Law: Consumer Complaints and Inquiries (PRO 03-21)

Ms. Navarro:

Capio Partners ("Capio") submits the comments below in response to the Department of Financial Protection and Innovation's Notice of Proposed Rulemaking Under the California Consumer Financial Protection Law: Consumer Complaints and Inquiries.

## **I. Background**

Capio is a healthcare debt collection agency which engages consumers to assist in resolving past-due accounts owing to medical providers.

Capio welcomes regulatory improvements to the debt collection industry and how collectors interact with consumers to resolve their concerns. Accordingly, Capio has legitimate interests in the Department's proposed regulations and submits these comments to related to the effects these proposed regulations will have on debt collectors and consumers alike.

## **II. Section 1071: Definitions**

The proposed regulation defines a "complaint" as "an expression of dissatisfaction from a complainant regarding a financial product or service, including the acts, omissions, decisions, conditions, or policies of a covered person or service provider related to the financial product or service." This definition is overly broad and subjective. Instead, proposed complaint procedures should be triggered only by formal, written complaints (directly to the covered entity or received by the Department) rather than oral complaints; this would eliminate ambiguity and subjectivity of the current definition.

### **III. Section 1072 : Complaint Processes and Procedures**

Proposed section (a)(2) prohibits the covered person from requesting information beyond what is set forth in section (a)(1). Additionally, Proposed section (a)(8) requires the covered person to follow the full complaint procedure if the complainant is only “reasonably identifiable” and any missing information is available in the covered person’s customer records. Debt collectors very frequently need information in addition to what is listed as exclusively to be requested. Consumers very frequently submit inquiries and complaints with incomplete identifying information. As a result, the covered person often cannot realistically identify an account and assist the consumer without more information, such as the account number in question. By not allowing covered persons to request additional identifying information, response times will frequently be delayed, numerous investigations impeded altogether, and the risk for third-party disclosure increased.

Section (b) outlines the requirements for a written “acknowledgement of receipt” when a complaint is received. The requirement for email and internet complaints to have both a confirmation that submission was successful *and* an acknowledgement of receipt is redundant and unnecessary. The two separate messages could be inconvenient and annoying to consumers. While there is an allowance for the messages to be combined, the one (1) calendar day requirement is largely infeasible. This does not account for weekends or other non-working days such as holidays and should be extended to at least five (5) business days.

Covered persons often have a large volume of postal mail that must be sorted and processed properly within various time frames. As such, requiring the acknowledgement of receipt to be sent within seven (7) calendar days is impracticable. Again, this does not account for weekends or holidays and should be extended to at least fifteen (15) business days for proper processing and assignment to the appropriate department.

Complaints received via telephone should not be required to immediately provide a unique tracking number as this does not allow enough time for the complaint to be processed by the appropriate department. Alternatively, allowing the complaint to be notated in the consumer’s account records would be sufficient for tracking purposes. As long as the consumer is able to be identified, a unique number for complaint tracking is unnecessary and overly burdensome, especially on small businesses. Many software programs utilized by covered persons allow for appropriate tracking and processing of complaints within their existing system. If a consumer inquires about the status of their complaint, it would be most efficient for an agent to pull up standard account

information which contains all activity on the account including required complaint information.

Proposed section (c) outlines the requirements for reviewing and evaluating complaints. These requirements are generally in line with what is already required of covered persons in processing other formal complaints. However, the section (c)(2) requirement for complaints involving third parties interferes with covered persons' current and future business relationships. This requires covered persons to "include in its contracts with third parties clear expectations about the third parties' responsibilities under this section, as well as appropriate and enforceable consequences for violating these responsibilities." The Department should not mandate private party contractual relationships nor require them to amend or alter existing business relationships that are otherwise compliant and functional. It should be left to the covered person to determine if the third party is hindering their ability to comply with regulations and whether or not to continue the business relationship.

Similarly, (c)(3) imposes obligations for reviewing all complaints on a monthly basis. Such an obligation is impractical and overly burdensome for one person (the designated officer). So long as the processes and complaints are reviewed in a competent and reasonable manner, which should be the requirement, the complaint process will be adequate – both to consumer and businesses.

Proposed section (e) requires a written response to be sent within fifteen (15) calendar days of receiving the complaint. While there is an allowance to send an update if there is a delay, it would be more feasible to at least allow fifteen (15) business days to conduct a full review, evaluation, and response.

Proposed section (f) will be difficult for covered persons, especially small businesses. For example, maintaining a list of persons who did not perform an investigation as well as summaries of all oral responses is overly burdensome. Accordingly, this list should be comprised only of essential data to properly maintain and confirm the complainant, the complaint, the response, account notes, correspondence, and relevant dates. Also, the five-year retention requirement in section (f) should be allowed to be kept within normal account records and notes without requiring a separate, unique tracking system. This would create redundancies within a covered person's recordkeeping system rather than keeping records streamline and efficient.

The quarterly complaint report requirement is overly burdensome and should instead be submitted to the Department on an annual or by-request basis. Tallying complaints by complaint type listed in section (h)(13) requires covered persons to subjectively categorize the complaints which could lead to misleading

and inaccurate data. Additionally, requiring these reports to be made public will lead to third-party disclosure and potentially publicize personal and confidential information, both of the consumer and the covered person. As such, these reports should be kept in the confidence of the Department.

Finally, the requirements related to handling inquiries is overly broad and impractical. Collection agencies receive multiple thousands of inquiries every month. Requiring covered persons to respond to every telephonic inquiry within 24 hours is unrealistic in every case. Moreover the requirements for tracking every unique inquiry (simple questions about an account), the attendant categories required to be tracked, and the requirement to report to the Department an annual report is overly broad, overly burdensome, and will be cost-prohibitive for many businesses. Accordingly, it is requested that the Department ease the burden for these requirements in a more practical manner by only requiring a report on inquiries forwarded by the Department.

#### **IV. Conclusion**

Capio appreciates the opportunity to participate in the rule making process and provide its comments, questions, and requests for clarity. Such comments and questions, borne of a unique and authoritative experience in the debt collection space, are offered with the desire to facilitate a healthy dialogue leading to a clearer, well-defined, final regulation that is equitable to both collector and consumer.