



July 5, 2022

Ms. Clothilde V. Hewlett
Commissioner, Department of Financial Protection and Innovation
2101 Arena Blvd.
Sacramento, CA 95834
Submitted electronically to regulations@dfpi.ca.gov

Re: PRO-03-21

Dear Commissioner Hewlett,

The undersigned organizations once again appreciate the opportunity to provide additional comment on the proposed regulations addressing the obligations of covered persons with respect to consumer complaints and inquiries. Our view is that these provisions, on the whole, go a long way toward adequately protecting consumers. In many important respects, the proposed regulations fulfill the important role of a complaint review process by guaranteeing substantive review of consumers' complaints, enhancing covered persons' accountability for problems in the consumer experience, requiring covered persons to prevent and remedy similar problems for people who have not complained, and mandating that DFPI receive information necessary to monitor covered persons' complaint processes.

In one critical respect, however, the proposed rules fall short because they do not guarantee *prompt* resolution of problems that consumers encounter with financial products and services. To the contrary, the proposed rules permit covered persons up to 60 days to resolve

complaints, and no longer offer any option for consumers to request expedited processing of complaints. Allowing covered persons up to 60 days is simply inadequate to protect consumers, especially in the many cases where actual money will be at stake in consumers' complaints.

This letter is focused on the timeline requirements of the proposed rules, which we strongly urge DFPI to reconsider. We also make one small suggestion regarding section 1072(c)(3)(A), which governs the obligation of an officer of the covered person to periodically review the complaint process. DFPI should make it clear that the officer *is required to* review that process for emerging patterns, remediate for similarly situated persons, and take prevention steps. The current language implies these obligations, but it would be useful for it to more clearly state that those steps are required of the officer. In light of DFPI's decision to make most of the complaint process delegable, moreover, DFPI must make officers' obligations crystal clear to avoid the risk that officers will not be informed enough to use the complaint process to proactively address issues for other consumers.

1. We commend DFPI for making several changes to the proposed rules from the initial draft, including revisions to the language access provision (section 1072(a)(6)); clarification about when consumers may complain to the DFPI in addition to the covered person (section 1072(a)(3)); restrictions on requests for personal identifying information (section 1072(a)(2)); requiring that incomplete complaints be processed if the consumer can be reasonably identified (section 1072(a)(8)); clarification about covered persons' obligations with respect to complaints forwarded from DFPI (section 1074(a)(1)); and expanding the inquiry and complaint categories to include issues related to accessing products or services (sections 1072(h)(13)(N) and 1073(d)(5)). Rationales for the suggested text changes that were accepted by the Department are set forth in the September 17, 2021 comment letter from Consumer Federation of California, et al. We appreciate the DFPI's decision to adopt those suggestions.

2. We strongly object, however, to the changes to the timelines for resolving complaints. The current proposed rules provide that a "covered person shall respond in writing with a final decision on all issues within fifteen (15) calendar days of receiving the complaint" but if "the covered person needs additional time to respond" that period can be extended an additional 45 days. Section 1072(e). The current proposed rules also omit completely the obligation from the prior draft of the regulation to provide for expedited resolution within 7 calendar days in cases of claimed "financial hardship."

We strongly urge DFPI to reconsider its decision to dramatically water down the timeline requirements in the proposed rule. The current proposed rule essentially gives covered persons carte blanche to take 60 days to resolve any complaint. While the rule states 15 days, extendable to 60, it does not provide any meaningful limits on a covered person's ability to claim the additional 45 days to resolve a complaint. Sixty days is far too long to resolve *any* consumer complaint but it is especially inappropriate here given that the rules apply to a broad

swath of consumer financial products and services. In its September 17, 2021 letter, Consumer Federation of California et al. explained why expedited resolution is critical for consumers, especially the most vulnerable low-income consumers. A brief summary of that discussion is below.

The proposed rules govern complaints ranging from inability to access deposited funds, missing funds, or error in an electronic fund transaction, offset, levy or garnishment. Any of these types of errors could lead to an immediate loss of funds to meet current family expenses, which could quickly snowball into a cascade of late fees on unpaid bills and other adverse consequences, including eviction. More than half of U.S. families are living paycheck to paycheck or face even more financial fragility, with 55% of families reporting that they spent all, or more than all, of their income each month. FINRA Investor Education Foundation, *The State of U.S. Financial Capability: The 2018 National Financial Capability Study (2019)*, p. 6, available at https://www.usfinancialcapability.org/downloads/NFCS_2018_Report_Natl_Findings.pdf. In cases of levy or garnishment, moreover, the loss of funds can be the first time consumers have learned about a judgment. See Comments by Elizabeth Gonzalez, *Debt Collector Advisory Board Zoom Recording*, at 43:54 (July 28, 2021), available at <https://dfpi.ca.gov/debt-collection-advisory-committee/>. There is no reason to permit covered persons to take 60 days to resolve important errors that could easily push a family down a path of financial ruin.

Indeed, federal law requires financial institutions to recredit disputed funds in the subset of complaints that implicate the consumer's money in an electronic fund transfer within *ten business days* in most cases. See Regulation E, 12 C.F.R. § 1005.11(c)(1) (implementing the Electronic Fund Transaction Act). The institution must resolve any errors within one business day of determining that the error occurred, *id.*, and may take an additional 45 days to resolve the complaint *only if* the institution provisionally credits the consumer's account in the meantime, within the first ten business days, *id.* § 1005.11(c)(2). This ten-business day time period in federal law recognizes that significant hardship can result if consumers must wait a long time for correction of errors involving the customer's money. There is no basis for DFPI to adopt substantially weaker time period in its complaint review rules.

Thus, we recommend amending the proposed rules to avoid consumer hardship in the event of delayed complaint resolution. We continue to believe that DFPI should revert to the draft text's requirement of expedited processing in the event of financial hardship (as well as adopt the recommendations from our September 17, 2021 letter to *strengthen* the expedited review process). At a minimum, however, DFPI should bring the timeline in the proposed rules in line with the standard from the federal Electronic Fund Transaction Act, cited above, and require resolution with 15 days (roughly 10 business days) and any longer period should be permitted only for good cause and if the covered person provides complete interim relief. Under no

circumstances, however, should DFPI retain the current timelines that provide covered persons with the freedom to take 60 days to respond to any complaint.

Thus, we recommend the following change to section 1072(e)(1)(A) (new language bolded):

(A) If the covered person **requires for good cause** additional time to respond, the covered person shall, within three (3) calendar days after the initial 15-day period ends, provide 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, which shall not be more than forty-five (45) calendar days after the initial 15-day period ends. **The covered person may take such additional time beyond the initial 15-day period only if the covered person provides the complainant with provisional but complete relief for the complaint no later than 15 days after receiving the complaint.**

3. Section 1072(a)(6) of the proposed regulation provides that an “officer [of the covered person] shall, at least once each month, review the operation of the complaint process to identify any emerging patterns of complaints, provide appropriate remedies to consumers that experience similar issues, and take appropriate steps, which may include policy changes and employee training, to prevent recurring problems that adversely affect consumers, including problems that have been addressed with a full and prompt refund.”

We commend DFPI for requiring the covered person to spot trends, adjust policies to prevent emerging problems, and provide remedies for consumers who have not complained but are similarly situated. As explained in our previous letter, these requirements are a crucial aspect of the complaint process. Not all consumers will have the sophistication to file a complaint, or even to know that a problem that they experienced could be the subject of a complaint. People who lack the confidence, time or knowledge to file a complaint need consumer remedies just as much, if not more, than those who do complain. The prevention and the appropriate remedies subsections both will serve those who might otherwise lose the benefits of the complaints process because they do not feel ready to use it.

We suggest, however, a slight tweak to the language of this section to make it abundantly clear that covered persons must engage in all three of the steps described in the text of the draft regulation. To accomplish this, we suggest that section 1072(c)(3)(A) be rewritten to read (new language bolded):

The officer shall, at least once each month, review the operation of the complaint process **and shall** identify any emerging patterns of complaints, provide appropriate remedies to consumers that experience similar issues, and take appropriate steps, which may include policy changes and employee training, to prevent recurring problems

that adversely affect consumers, including problems that have been addressed with a full and prompt refund

We recommend this change because the current language implies these obligations, but it could be misread not to do so. Although it would be a stretch, a covered person might misread the current draft text of section 1072(c)(3)(A) to review require review only of the *process* itself, the rather than to both review the process and take the required actions based upon the underlying issues in the complaints.

This clarification that the review officer has substantive duties is particularly important because the Department has decided not to make crucial aspects of the complaint process non-delegable. Without a non-delegation rule, there is a risk that the covered person will not know enough about what issues are emerging in the complaints, which could undermine some of the value of section 1072(c)(3)(A). For the reasons discussed in our prior letter, we continue to believe that DFPI should make all of the important aspects of the complaint process non-delegable. If DFPI is not going to impose such a requirement, however, it must at a minimum clarify that section 1072(c)(3)(A) requires the officer to in fact review the substance emerging from the complaint process for patterns and take the described remedial steps. Such an obligation would require the officer to be sufficiently informed about the subject matter of complaints, which should to somewhat mitigate problems that could arise from allowing covered persons to delegate critical aspects of the complaint process.

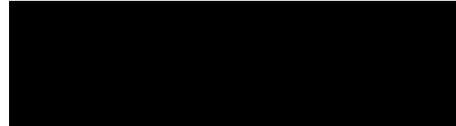
Overall, we are very happy to support DFPI's comprehensive proposed regulations for complaint processing. The proposed rules require a robust process to review and resolve consumer complaints and contain recordkeeping and oversight regulations that will help DFPI supervise compliance with the rules. The rules do fall short, however, in not ensuring *timely* responsiveness to consumer complaints. We strongly urge DFPI to rethink its decision to relax the timeline requirements from those in the prior draft text, which did a far better job of ensuring that consumers will not be pushed into financial ruin while waiting for a covered person to rectify an error. We also recommend a small change to the portion of the rule governing the obligations of an officer of the covered person as it supervises the complaint process.

If any further information would be useful, please contact Andrew Kushner at [REDACTED] [@responsiblelending.org](mailto:[REDACTED]@responsiblelending.org), [REDACTED], or Gail Hillebrand at [REDACTED] [@gmail.com](mailto:[REDACTED]@gmail.com)

Very truly yours,



Andrew Kushner
Policy Counsel
Center for Responsible Lending



Gail Hillebrand
Consumer Financial Protection Bureau (retired)

Leigh Ferrin
Director of Legal Services
Public Law Center

Robert Herrell
Executive Director
Consumer Federation of California

Ted Mermin
Director
California Low-Income Consumer Coalition

Jenn Engstrom
State Director
CALPIRG

Heidi Pickman
Vice President, Engagement & External Affairs
California Association for Micro Enterprise Opportunity

Kevin Stein
Deputy Director
California Reinvestment Coalition

Kat Taylor
Office of Kat Taylor

Michael Best
Staff Attorney
National Consumer Law Center

CC: David Bae