

July 5, 2022

Commissioner of Financial Protection and Innovation
Attn: Sandra Sandoval, Regulations Coordinator
300 South Spring Street, Suite 15513
Los Angeles, CA 90013

Via Electronic Mail to: regulations@dfpi.ca.gov
cc: [REDACTED]@dfpi.ca.gov

Re: Comments on Proposed Rulemaking under the California Consumer Financial Protection Law: Consumer Complaints (PRO 03–21)

Dear Ms. Sandoval,

On behalf of the Electronic Transactions Association (“ETA”), the leading trade association for the payments industry, we appreciate the opportunity to provide additional comments on the Department of Financial Protection and Innovation’s (“DFPI”) consumer complaints management rule proposed on May 20, 2022, pursuant to the California Consumer Financial Protection Law (“CCFPL”).

ETA membership supports the implementation of common-sense complaints management to ensure that consumers receive prompt services, responses, and resolutions. We view these processes as essential components of our customer relationships and a rich source of information that often leads to product enhancements, as well as a key line of defense against inadvertent consumer harm. Nevertheless, the DFPI’s draft rule would transform typical complaints management functions into enforceable requirements. With that in mind, ETA members feel the rule must serve the best interests of California consumers, but also must be feasible to implement.

The ETA believes the rule could be significantly improved by allowing industry participants that operate *online* to meet the rule’s requirements using technology that customers use to engage with their product(s). Additionally, ETA has outlined sections of the draft rule that we believe are burdensome to industry and that would disadvantage market participants attempting to scale new consumer products and could serve as a potential barrier to market entry. As California sees itself as a leader in innovation, ETA believes the DFPI can better achieve the balance of consumer protection using the technological tools built in the home state.

- **Definition Of Covered Persons**

ETA asks the DFPI to clarify how they define people in the state of California. Are you using a physical address? And does this apply to residents and visitors? Would DFPI allow determination of this through an Internet Protocol address (IP address)?

- **§ 1070 Exemptions**

Sections 1072, 1073, and 1074 of this Article shall not apply to: (a) a consumer reporting agency as defined by the Fair Credit Reporting Act (15 U.S.C. Sec. 1681a(f)), or (b) a student loan servicer as defined by Section 1788.100 of the Civil Code.

ETA proposes an additional exemption for CFL holders. DFPI currently has an avenue for licensee review because complaints process, policy, procedures, and resolutions are already reviewed in the CFL examination process.

- **§ 1072(a)(3)**

ETA suggests “shall prominently disclose the procedures for filing both oral and written complaints...” Mandating a particular font size is overly prescriptive, especially when these communications can take many different forms and formats.

- **§ 1072(a)(5)** - *The covered person shall maintain a telephone number, which complainants can use to file complaints orally with a live representative during regular business hours. If a live representative is unavailable to take the call, the covered person shall provide complainants with the option to leave a voicemail message with their telephone number for a call back from a live representative within 24 hours of the voicemail message.*

Live phone support will divert resources from channels that can provide better consumer experiences that are more suitable for online-only businesses. Moreover, written channels, like chat, allow us to triage consumers and authenticate them upfront for better security as well as more efficient routing to specially trained agents. For these reasons, if the DFPI is concerned about a consumer's ability to receive live support, the rule should allow for live *written* support as an option for online-only businesses, or a broader concept of real-time support, rather than requiring phone support (if the concern is consumers' lack of Internet access, those consumers are less likely to be using an online-only business). Further, ETA reiterates that if the DFPI moves forward with requiring a staffed telephone number, the hours are changed from ten to eight hours, in line with standard office hours.

- **§ 1072(c)(1)** - *Each complaint, including the allegations in the complaint form and all supporting materials submitted by the complainant, shall be reviewed by staff of the covered person who are responsible for the services and operations which are the subject of the complaint.*

This provision could require business teams that are responsible for services and operations to review complaint materials, while consumers would be better served by trained customer support operations personnel. Rather than requiring review of complaints materials, the DFPI should consider requiring staff responsible for services and operations to review only complaint trends that signal the need for product enhancements or remediations. This change would allow businesses to centralize complaints handling to gain efficiencies and holistic oversight by trained complaints management personnel.

- **§ 1072(c)(1)(A)** - *For complaints that do not require further investigation, the covered person shall document the names of all individuals who decided not to investigate and the reason an investigation was not needed to resolve policies and procedures supporting the decision not to investigate.*

How is "investigation" defined here? Covered persons may investigate every complaint to determine if it is valid, and if yes, what the appropriate resolution is. The use of "further investigation" here seems to imply something greater than necessary in each case. The names of individual complaint investigators are unnecessary as to the decision not to investigate further, especially given that training on when to investigate further, and when to refrain from further investigation may be provided. Additionally, the citation of the specific provisions of an organization's policies and procedures related to the decision not to investigate is unnecessary and often not feasible as each complaint may have different attributes and not all types of complaints may have advisory guidelines available.

- **§ 1072(c)(2)** - *For complaints involving the conduct of a third party who has been contracted to provide a good or service in connection with the financial product or service being complained about, the covered person shall, in addition to performing its own investigation of the alleged conduct, require the third party to investigate each complaint using the procedure set forth in subdivision (c)(1)(B) of this section and to forward all relevant documents and findings to the covered person. The covered person shall 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.*

Implementation of this broad requirement may be redundant or burdensome for third parties that are unequipped for investigations. An implementation period should allow sufficient time for development of the necessary processes. In addition, this requirement should be amended to clarify that a covered person should only be required to reach the third party in connection with the complaint if necessary to resolve the complaint, and that redundant information need not be shared by the third party.

- **§ 1072(a)(4)** - *The main page of the website for the covered person shall prominently display, at or near the top of the page, a link to the complaint form and to instructions on how complainants may submit their oral and written complaints, including the telephone number, e-mail address, mailing address, and website for filing a complaint.*

This requirement is overly prescriptive and unnecessary since consumers easily find "contact us" webpages.

- **§ 1072(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.*

While live support is available to assist consumers during business hours, responses to voicemail messages within 24 hours are not a business practice supported by current staff capabilities and would be a significant adverse economic impact, possibly harming availability of live support itself. A call back from a live representative within twenty-four hours is too prescriptive and arbitrarily disconnected from a given volume and irregular frequency of consumer phone calls received.

- **§ 1072(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.*

The time limit for filing a complaint within a four-year timeframe is unreasonable, given products/services and business operations may be enhanced or discontinued abruptly.

- **§ 1072: (b)(1)** - *For complaints received via e-mail or the internet, the covered person shall provide to the complainant, within one (1) calendar day after receiving the complaint, an [electronic correspondence] e-mail message confirming that the electronic submission of the complaint was successful and, within five (5) calendar days after receiving the complaint, an e-mail message with the written acknowledgement of receipt required by subdivision (b) of this section.*

If the primary way a consumer files a complaint is "in app" the acknowledgement should also be "in app" as that would address how the consumer is choosing to communicate with the licensee.

- **§ 1072(b)(2)** - *For complaints received via postal mail, the covered person shall provide the written acknowledgement of receipt required by subdivision (b) of this section via postal mail within seven (7) calendar days of receiving the complaint.*

This is too short a period of time for postal mail. In addition, a requirement for any response by postal mail is unnecessary if a business operates online, the relevant business with the customer was conducted online, and the customer is equipped with an email address. Regardless, entities should have the option to respond by email (if email address is available), unless the consumer requests a response via postal mail. Additionally, ETA believes that all of the deadlines should be amended from “calendar days” to “business days.”

- **§ 1072(b)(3)** - *For complaints received via telephone, the covered person shall orally provide the complainant with a unique tracking number to identify the complaint, and, within seven (7) calendar days of receiving the complaint, provide via postal mail the written acknowledgement of receipt required by subdivision (b) of this section.*

Again, a requirement for any response by postal mail is unnecessary if a business operates online and the relevant customer is equipped with an email address. Regardless, acknowledgments of such complaints should not be required by mail, unless the consumer requests a response by mail. Additionally, ETA believes that all of the deadlines should be amended to from “calendar days” to “business days.”

- **§ 1072(e)(1)** - *The covered person shall respond in writing with a final decision on all issues within fifteen (15) calendar days of receiving the complaint.*

This is too short a time period and will likely lead to higher headcount needs and unnecessary resourcing costs that would disadvantage market participants attempting to scale new consumer products. Requiring that the final decision be made within 15 calendar days is unreasonable as it does not allow time for receiving the complaint; tracking all the necessary fields; investigating the complaint, which could require substantive time if there is any sort of systematic issue; determining what the appropriate resolution is; and drafting a final response.

Notably, the United Kingdom has similar timeline requirements, but their requirements provide companies 30 days to send a final response with the caveat that if the company was unable to send a final response because more time was required to fully investigate the complaints, the company could meet the 30-day requirement by sending notice to the customer that it required more time to investigate and would send a final response as soon as possible.

- **§ 1072(d)(3)** - *If a complainant requests a status update using the telephone number or email address provided . . . along with sufficient information for the covered person to identify the complaint, the covered person shall respond with a status update to the complainant within five (5) calendar days in the same format as the complainant’s request.*

This provision should be limited to responses that take longer than a threshold time period (e.g. 15 days).

- **§ 1072(f)** *The complaint process shall require a covered person to maintain a written record of each complaint for at least five (5) years from the time the complaint was initially filed. The written record shall include the following:*

3 years would be a more reasonable retention period. The purpose or perceived benefit of retention for more than 3 years should be carefully considered against additional burden of cost and record maintenance.

- **§ 1072(h)** *- The covered person shall submit to the Department a quarterly complaint report, which shall be made available to the public. The report shall include information regarding all complaints received by the covered person, including complaints forwarded by the Department.*

ETA believes that this rule could impose a significant burden on new market participants without providing clear benefits for consumers. To mitigate the impact, this requirement should be limited to companies that exceed a minimum threshold for complaints volumes. Additionally, to enhance the usefulness of these reports to consumers when made public, we believe it makes sense to publicize only a subset of the summary statistics rather than simply posting the reports in their entirety. For example, consumers are much more likely to be interested in and review summary data of a particular report (e.g. total number of complaints received, total number of complaints denied, etc.) than they are of individual complaint-level detail (e.g. explanations for why individual complaints were not resolved in 15 days, explanations for why individual complaints have not had final decisions issued, etc.). In addition to the complaints management requirements, section 1073 of the proposed rules specify requirements for inquiries that covered persons must obtain from every person who makes an inquiry, including name, phone number, mailing address, etc. Obtaining this information from every person who calls a business to ask a question would be an extreme operational burden. Therefore, any final rules should limit the entirety of section 1073 to specific types of inquiries that DFPI believes are most sensitive for consumers – e.g., about specific rates, unless those are clearly disclosed in materials that the business already made available to the consumer.

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As DFPI is aware through its work to understand innovation in California and novel ways that consumers are interacting with financial services, an opportunity exists to reach and support all consumers where they are. As digital channels multiply over time, we encourage DFPI to chart a future-flexible path that helps meet evolving consumer preferences and enhances DFPI's consumer protection mission. We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any aspect of our comments, please contact me or ETA Senior Vice President, Scott Talbott at

[REDACTED].

Respectfully Submitted,

[REDACTED]

Matt Tremblay
Director, State Government Relations
Electronic Transactions Association

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ETA is the world's leading advocacy and trade association for the payments industry. Our members span the breadth of significant payments and fintech companies, from the largest incumbent players to the emerging disruptors in the U.S and in more than a dozen countries around the world.

