



July 5, 2022

*Via Email*

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Department of Financial Protection and Innovation

Attn: Sandra Navarro

300 S. Spring Street, Suite 15513

Los Angeles, CA 90013

**Re: PRO 03-21 — Proposed Rulemaking Under the CCFPL: Consumer Complaints**

Dear Ms. Navarro:

On behalf of the Guaranteed Asset Protection Alliance (“GAPA”), we thank you for the opportunity to provide comments on the Department of Financial Protection and Innovation’s proposed regulations creating Article 5 of the California Consumer Financial Protection Law regulations (the “Proposed Regulations”).

GAPA, formed in 2006, is comprised of companies experienced in offering quality guaranteed asset protection waiver products throughout the country. Our members include insurance companies (offering GAP products as waivers), lenders, and administrative services companies who, together, bring valuable products to market in a responsible and competitive way. GAPA’s mission is to preserve the viability of its industry and promote fair and equitable legislation and regulation of its members and their products so that its members may continue to offer meaningful options to consumers who choose to purchase this protection.

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GAPA is submitting comments to support the broader effort to support covered persons, service providers and any entity that might be impacted by the Proposed Rulemaking to ensure workable, cost-effective solutions prevail that benefit all stakeholders. Our comments focus on the most concerning items.

**Section 1072: Compliant Processes and Procedures:**

- **Paragraph (a)(2)** outlines the amount of information that can be requested by a covered person; we suggest expanding this to include more information to properly ensure the individual can be identified and their issue can be serviced.
- **Paragraph (a)(3)** appears to require the written disclosure of complaint procedures in all communications to the consumer; we suggest the removal of this requirement as overly burdensome and confusing. We suggest a covered person should only be required to disclose such procedures once, in writing, early in the process and to also satisfy this requirement utilizing a prominent link on its main webpage pursuant to (a)(4) below.
- **Paragraph (a)(4)** appears to require a link at or near the top of the covered person's main web page; we suggest this simply require the covered person to have a link on its main page that is prominently displayed, which will allow flexibility based on the myriad of web designs to fulfill this requirement.
- **Paragraph (a)(5)** appears to require that the customer be able to leave a voice message; we request this requirement be reevaluated and potentially dropped as this would fundamentally alter many call-center and claim adjudication processes and increase cost to the overall delivery of services. At a minimum, we request that the 24-hour response requirement be reevaluated as it is unfeasible, especially on non-business days such as weekends and holidays.
- **Paragraph (b)** requires the covered person to respond within a variety of timeframes that will be unworkable in a variety of situations. For example, there is a requirement in (b)(1) that within one (1) calendar day after receiving the complaint an email message must be sent confirming that the electronic submission was successful. This requirement fails to consider employee absences due to the observance of holidays, vacations, illnesses, or a variety of other situations. Compliance could almost only be assured if it was an email communication, and an automatic reply was generated. The timelines contemplated in paragraph (b) should be broadened and further clarified to remove ambiguity and burdens associated with compliance.
- **Paragraph (c)** outlines a series of documentation and recording practices that are concerning. For example, (c)(1)(A) requires identifying the names of individuals who made the decision to not investigate a complaint, as well as a review by the "responsible" person. Determining who is "responsible" is unclear in terms of how extensive this requirement would be. Also, identifying

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the individual detracts from the overall decision and what necessitated same. We recommend that the focus should be on ensuring a well-documented decision is present for each complainant to fully identify the rationale for the decision and the supporting documentation for same. Further, unique to (c)(2), requiring a third party to follow the same process seems unduly burdensome and will require a substantial amount of change. We suggest removing this portion and only requiring the covered person to follow these procedures and have sufficient contractual controls in place to show oversight.

- **Paragraph (d)** governs the complaint process and appears to require reasonable processes; we request five (5) “calendar days” be changed to “business days” in (d)(3) to afford reasonable time to comply.
- **Paragraph (e)** dictates response timeframes, such as the requirement that all responses to a complaint shall be issued in writing within fifteen (15) calendar days, with two fifteen (15) day extensions. Depending on the nature and complexity of the matter, this timeframe will be unworkable. We feel this time frame should be altered to be at least “business days,” or longer, with the ability to perform communications over the telephone, not necessarily in writing, to satisfy the timing requirement, with a follow-up letter, as appropriate. Specific to section (e)(3), pertaining to adverse actions against a complainant, we respectfully request that covered persons be allowed to investigate fraudulent, harassing, or abusive claims and be afforded the ability to protect themselves from future exposure.
- **Paragraph (f)** requires a five (5) year retention period to maintain a written record of each complaint, which seems excessive; we suggest a maximum of four (4) years as consistent with the time a consumer can submit a complaint under (a)(7). In addition, we suggest the following: (f)(2) change “and” to “or”; (f)(4) change to “If the subject of the complaint, the name...”; (f)(5) remove entirely as unnecessary; (f)(10) change to “A description of the complaint”; (f)(11) remove “...the names of all persons who decided not to investigate and...”; and (f)(13) change “corrective action” to “actions or a final determination.”
- **Paragraph (h)** this paragraph pertains to quarterly complaint reports to the Department. We suggest the report not be mandatory; rather, it “may” be requested by the Department. In addition, we request an annual report, not quarterly, as this would be very time consuming, costly, and unduly burdensome. Such reports should be afforded privacy/confidential considerations due to the susceptibility of personal and/or confidential information being submitted, or protections should be extended to redact certain data elements. We further suggest that the report be due sixty (60) days after the reporting period ends to accommodate extensions contemplated in paragraph (e).

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**Section 1073: Inquiry Processes and Procedures**

To the extent relevant, the same comments identified in Section 1072 apply to this section. Beyond, inquiry is defined to basically cover any communication, of any kind, and would require a robust, costly, time-consuming, and overly broad set of requirements on normal communication channels between a covered person and a customer. This process seems to interject onerous processes that are unnecessary to govern the flow of business and we respectfully request the Department to delete this provision in its entirety as unnecessary, looking to section 1072 as sufficient. Any unresolved inquiry or inquiry resolved in an unsatisfactory manner would likely result in a complaint subject to the requirements of section 1072.

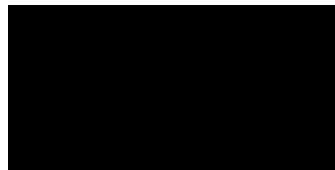
**Section 1074: Processes and procedures for covered persons to provide a timely response to the Department**

We suggest the Department develop a standard, industry-wide form that identifies the salient data points and information requested, working in collaboration with the industry to identify a workable form and solution that limits the impact to a covered person.

**General Implementation/Effective Date**

In addition, as many of these changes are significant and will have a fundamental change to consumer interactions, we respectfully request a delayed implementation date to ensure the industry has sufficient time to adjust its processes to ensure compliance; we suggest at least 180 days, or longer.

Thank you for your consideration of our recommendations,



Tom Keepers

Executive Director - GAPA