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Department of Financial Protection and Innovation  
Attn: Araceli Dyson  
2101 Arena Boulevard  
Sacramento, California 95834

Subject: Comments on PRO 03-21

To Whom It May Concern:

This letter is submitted in response to the Notice of Modifications to Proposed Regulations under the California Consumer Financial Protection Law (CCFPL): Consumer Complaints and Inquiries (PRO 03-21), issued on December 22, 2022. This letter also serves as a follow-up to the comment letters I submitted regarding PRO 03-21 on September 17, 2021 and June 21, 2022.

I appreciate the Department's willingness to accept many of my prior suggestions. However, as noted below, I believe that the current proposed regulations continue to raise concerns and would benefit from further revision. The comments below are provided in chronological order. At the conclusion of this letter, I also reiterate a general recommendation I have previously expressed to the Department, which is applicable to this regulation and to other regulations intended to apply to all covered persons.

**COMMENTS AND RECOMMENDATIONS SPECIFIC TO THE PROPOSED LANGUAGE**

**Proposed Section 1071: Definitions**

Definition of complaint (1071(a)(1)(G)): The proposed regulation clarifies that a complaint does not include any matter under litigation, including documents filed with a court and discovery requests. This is a very helpful clarification, but it does pose a question that is unanswered in your regulation; namely, "does a complaint cease to be a complaint as of the date on which it becomes the subject of litigation?" If so, may a covered person dispense with the requirements of the proposed regulations in connection with a specific complaint, as of the date a customer or former customer files suit against the covered person or as of the date the covered person files suit against a customer or former customer in connection with that complaint? Clarification of the Department's thoughts regarding this issue would be helpful to both covered persons and consumers.

### **Proposed Section 1072: Complaint Processes and Procedures**

- 1) Paragraph (2) of subdivision (b) requires a covered person to prominently display, on any web pages with information related to a financial product or service, a clearly indicated link in at least 12-point font, which includes specified information about how to submit a complaint. It is generally understood that font requirements are meaningless in the context of Internet web sites, because of different device sizes and different user-specific preferences regarding default screen displays. Rather than require a specified font on individual web pages, I recommend that the Department require the web sites of covered persons to prominently display a complaint link, in a font size at least as large as the font size used to describe the covered person's product or service on that web page.

Specific suggested language: "(2) The website for the covered person shall prominently display, on any web pages with information related to a financial product or service, a clearly indicated link in **a font size intended to be clearly legible, and which is at least as large as the font size used to describe the product or service, at least 12-point font** that states.....

- 2) Paragraph (2) of subdivision (c) contains two prohibitions: subparagraph (A) prohibits a covered person from requesting personal identifying information beyond what is reasonably necessary to identify the complainant and to send correspondence, and subparagraph (B) prohibits a covered person from requesting financial information unrelated to the specific complaint of the consumer. It is entirely possible that a covered person could reasonably need general financial information from a consumer without that information being specifically related to an individual complaint (e.g., a bank account number into which to deposit a refund). For that reason, I recommend applying the same criteria to both prohibitions and prohibiting a covered person from requesting personal identifying information or financial information, beyond what is reasonably necessary to investigate and resolve the complaint.

Specific suggested language: "(B) Request financial information ~~unrelated to the specific complaint of the consumer~~ **beyond what is reasonably necessary to investigate and resolve the complaint.**

- 3) Paragraph (5) of subdivision (c) prohibits a covered person from imposing a time limit for filing a complaint that is shorter than one year from the time the complainant discovers the act, omission, decision, condition, or policy that is the subject of the complaint. Although the Department's willingness to reduce the minimum time limit for filing a complaint from four years to one year is a significant improvement, the current, proposed language imposes an unreasonable burden on covered persons, because it is impossible for any covered person to know when a consumer may discover something about which he or she wishes to complain (it could be a year from the date of the act, or it



could be five years; the covered person has no way of knowing). Rather than basing the time limit on a date known only to one of the two parties involved, I recommend that you base it on when the product or service that is the subject of the complaint was provided (a date known to both parties).

Suggested language: (5) The covered person shall not impose a time limit for filing a complaint shorter than one (1) year from the ~~time the complainant discovers~~ date on which the act, omission, or decision occurred or on which the condition or policy that is the subject of the complaint was adopted by the covered person.

- 4) Subdivision (e) requires covered persons to review, evaluate, investigate, and resolve complaints. To better reflect the intent of the regulations, I recommend the following revision and clarification:

Suggested language: (e) The covered person shall review, evaluate, investigate, and take reasonable steps to resolve complaints.

- 5) Paragraph (2) of subdivision (g) requires written responses to complainants to include specified information in at least 12-point boldface font. A 12-point font requirement is unlikely to be problematic if the covered person communicates with the complainant via US mail. However, because the regulation anticipates that many covered persons will communicate with complainants via email, the font requirement must accommodate electronic communications (see comment number 1 under Complaint Processes and Procedures).

Suggested language: “~~In at least 12-point boldface font,~~ In a font size intended to be clearly legible, and which is at least as large as the font used for the required explanation,

- 6) Subdivision (j) describes the required elements of the annual complaint report. One of these elements more properly belongs in Section 1074, which covers communications between the Department and covered persons. Specifically, paragraph (2) of subdivision (j) requires a covered person to include (in a portion of its report that is available to the public) the covered person’s designated e-mail address for receiving requests from the Department regarding consumer complaints, requires each covered person to ensure that this e-mail address is accessible by the officer of the covered person with primary responsibility for the complaint process, and requires the covered person to notify the Consumer Financial Protection Division within five business days, if the covered person’s designated e-mail address for receiving requests from the Department regarding consumer complaints changes. There is nothing inherently problematic about these requirements, but they do not represent report elements.

Suggested language: Delete proposed Section 1072(j)(2) in its entirety and add a new subdivision to Section 1074 (likely a new subdivision (b)), which reads: “(b) A covered person shall provide the Department with a designated e-mail address for receiving requests from the Department regarding consumer complaints. This e-mail address shall be accessible by the officer of the covered person with primary responsibility for the complaint process. In the event of a change to this e-mail address, the covered person shall, within five (5) business days of the change, provide the Consumer Financial Protection Division with the new e-mail address.”

- 7) Paragraph (8) of subdivision (j) requires each covered person to report to the Department regarding the total number of complaints “denied,” either partially or fully. It is unclear what constitutes a denial. Is a claim considered denied if a customer requests something to which they are not entitled? Because the term “denial” is so subjective, this question is likely to be interpreted differently by different covered persons, and thus it is unlikely to provide the Department with useful information.

Recommendation: Delete paragraph (8) of subdivision (j).

- 8) I also recommend that the Department delete question (11) for the same reason – it is unlikely to lead to the collection of any valuable information. Any covered person that takes longer than 15 business days to respond to a complaint will cite as its reason “insufficient time to resolve complaint.” It is unclear what other answers the Department would expect to see in this context.
- 9) Paragraph (13) is missing clarifying language that is present in paragraph (14) and that could be helpful to covered persons. Specifically, paragraph (14) includes language that states “a single complaint can include more than one complaint type.” Is the same true of the categories in paragraph (13)? Or does the Department want the covered person to select only one category when providing the data requested in paragraph (13)? I recommend adding language to paragraph (13) to clarify the Department’s intent.
- 10) My suggested clarification of paragraph (13) raises a related issue I urge the Department to consider. Without questioning the Department’s desire to fully understand the types and numbers of complaints each covered person receives, I am concerned that the nature of the information requested in paragraphs (13) and (14) is likely to result in the Department overstating the number of consumer complaints against covered persons when it issues annual reports and press releases summarizing covered persons’ submissions.

When it issues a report or a press release regarding the total number of consumer complaints fielded by covered persons under its jurisdiction, the Department should cite a number that equals the sum of covered persons’ responses to the information requested in



paragraph (3). The total number of consumer complaints fielded by covered persons under the Department's jurisdiction should *not* equal the sum of all categories checked in responses to paragraphs (13) and (14). Double- or triple-counting complaints can have the effect of undermining consumer confidence in certain industries and deprives policy makers of valuable information they need to evaluate whether enhanced oversight of covered persons is warranted.

### **GENERAL COMMENTS AND RECOMMENDATIONS APPLICABLE TO THIS PROPOSED REGULATION AND OTHER REGULATIONS APPLICABLE TO ALL COVERED PERSONS**

As the proposed regulations are drafted, they apply to *all* covered persons, not just those covered persons who will be required to register with the Department. For that reason, this regulation will apply to all persons subject to the California Consumer Financial Protection Law (CCFPL; i.e., all persons offering or providing consumer financial products or services in California, and their third-party service providers, unless those financial service providers or their third-party service providers are expressly exempt from the CCFPL). Although many financial service providers are already aware of the CCFPL and of their coverage under it, it is undoubtedly the case that many other financial service providers are unaware of that law, or are aware of the law but unaware that they are subject to it. For that reason, it is highly likely that a significant number of financial product and service providers and their third-party service providers will be unaware of this regulation and their responsibilities under it.

Certainly, all financial product and service providers have a legal responsibility to know the laws to which they are subject. However, many of these providers are small businesses that do not have dedicated regulatory compliance departments, and it is highly likely that a significant number of entities subject to the law are unaware of its existence. Once these regulations become final, I highly encourage the Department to do extensive outreach across a broad swath of consumer financial product and service providers operating in California, with the goal of ensuring that all entities subject to the regulations are aware of them and of their responsibilities under them. I also encourage the Department to be lenient when it encounters small businesses that have failed to comply with these regulations due to ignorance about their existence. The Department's approach toward small business' compliance with this regulation should be educational, not punitive.

If these regulations are to achieve their goal of ensuring that all financial product and service providers in California have robust consumer complaint policies and procedures in place, extensive and continuing outreach by the Department to all consumer financial product and service providers operating in California will be critical.

Thank you for the opportunity to comment on the proposal. Please don't hesitate to reach out to me at [enewhall@newhallconsulting.com](mailto:enewhall@newhallconsulting.com) or (916) 666-0314 if you have any questions regarding this letter.



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