

January 20, 2023

Department of Financial Protection and Innovation
300 S. Spring Street, Suite 15513
Los Angeles, CA 90013

Via email to: regulations@dfpi.ca.gov

With copy to david.bae@dfpi.ca.gov

Re: PRO 03-21

Dear policymakers,

Lithic, Inc. (“Lithic”) appreciates the opportunity to provide further input on the Department of Financial Protection and Innovation’s (“DFPI”) December 22, 2022 [modifications to the proposed PRO 03-21 regulations](#) regarding consumer complaints (“Proposal”) under California Consumer Financial Protection Law Section 90008, subdivisions (a), (b), and (d)(2)(D).¹ We commend the DFPI’s modifications to the Proposals; however, we are writing to express a remaining concern and recommendations. Our below thoughts are largely based on operational best practices and industry standards for companies offering consumer financial services products.

For background on Lithic and Privacy.com, and an overview of modern customer service practices, please refer to our prior July 5, 2022 comment letter on the Proposal.²

The Definition of Complaint Continues to Capture Illegitimate Complaints from Fraudsters and Expressions of Immaterial Personal Preferences from Customers

The proposed definition of complaint³ remains overly broad and will create operational work without a corresponding consumer benefit. The latest proposed definition reads:

“Complaint” means an oral or written expression of dissatisfaction from a complainant regarding a specific issue or problem with a financial product or

¹ Because we and our API customers act as service providers to national banks and banks in other states, it is not entirely clear that the rulemaking would apply to our companies. However, to help inform the Department, as well as to preserve our rights and abilities to challenge future rules, we are providing these comments.

² Available at: <https://dfpi.ca.gov/wp-content/uploads/sites/337/2022/08/PRO-03-21-Lithic-Inc.-7.5.22.pdf?emrc=49015d>

³ Proposal Section 1071(a).

service, including the acts, omissions, decisions, conditions, or policies of a covered person or service provider related to the financial product or service.⁴

We welcome the list of exclusions to the definition of complaint,⁵ and believe this is a good first step to making the rule's consumer benefits outweigh its burdens on companies. However, the term continues to be overly broad so as to force companies to action and report complaints that are fraudulent, abusive, frivolous and otherwise immaterial. The work this version of the rule would create for companies would not have a corresponding benefit on consumer protection, and in fact is likely to burden both the companies that have to respond to and report on these complaints and the DFPI. Specifically, we believe the current Proposal will render the DFPI's complaint reporting too noisy to identify legitimate consumer protection issues.

We believe the Proposal's definition should be tailored to exclude "nuisance complaints," which are fraudulent, abusive, frivolous, and/or otherwise immaterial complaints. This view is formed by our years of operational experience, where we've seen the bravado of fraudsters firsthand and at scale.

How fraudsters use complaints is a helpful lens in examining whether the current definition of "complaint" is properly tailored. Fraudsters often submit complaints when their schemes are thwarted by a company's controls. These "complaints" can contain abusive, offensive, and threatening language, which the fraudsters attempt to use to bully customer support staff into giving in. These fraudulent complaints also often include fabricated claims in an attempt to pressure the company to allow the fraudulent activity to continue.

Under the Proposal's definition of complaint, covered persons would need to report these as legitimate complaints to the DFPI. In these instances, responsible businesses will appear as potential sources of consumer harm to the DFPI, when in fact they are performing as expected under industry rules and the Federal Trade Commission's Red Flags requirements. Without further changes to the Proposal — these legitimate and responsible businesses would face a difficult choice: report nuisance complaints to the DFPI and risk attracting unjustified scrutiny, acquiesce to fraudsters and let their fraud continue, or violate the Proposal and not report the complaints.

In addition to fraudulent complaints, we believe the rule should be further tailored to exclude expressions of dissatisfaction. Such expressions are almost always a consumer expressing a preference for how something used to be done, or to try to

⁴ Proposed Section 1071(a).

⁵ Proposed Section 1071(a)(1).

circumvent a legally required part of onboarding. They can also be used as a tool by fraudsters to pressure a company to break its internal policies. To illustrate, the following examples could reasonably be viewed as “an expression of dissatisfaction . . . regarding a specific issue with a financial product or service:”

- A user complaining about having to provide their social security number during onboarding (as required to comply with federal anti-money laundering regulations).
- A user complaining about a policy change that ended a discretionary referral bonus program.
- A user complaining that a personal budgeting tool doesn’t offer a bank account product.
- A consumer saying they dislike the shade of blue a website uses.
- Complaints about immaterial technical glitches, such as an app screen or webpage that needs to be reloaded.
- A user submitting a complaint with an exaggerated claim as a way to pressure a company to offer them a discount.

These are not all purely hypothetical examples; they are the sort that consumer financial technology companies regularly receive. They are also not examples of consumer harm, but merely things companies must do or are lawfully permitted to do in the course of their operations.

Requiring covered persons to report these events as “complaints” to the DFPI weakens the value of the DFPI’s complaint Proposal. It will cause at least a portion of the DFPI’s databases to accumulate with nuisance complaints. This will in turn hinder the DFPI’s ability to discern actual consumer harm by creating misleading data that will crowd out material complaints and indications of actual harm. The current overbroad definition will also create significant costs for the DFPI and covered persons, as the DFPI will likely investigate and report red herrings caused by nuisance complaints, in addition to having to process and maintain the nuisance complaint data.

We are not the only commenters to have identified this concern. The California Financial Service Providers Association⁶ raised alarm at the overbroad definition of complaint. The Online Lenders Alliance expressed concerns that the definition of complaint is “so vague and broad that no covered person could ever know what may or may not constitute a complaint and could be interpreted in such a manner as to

⁶ Comment letter available at: <https://dfpi.ca.gov/wp-content/uploads/sites/337/2022/08/PRO-03-21-California-Financial-Service-Providers-6.24.22.pdf?emrc=714007>

encompass most consumer communications.”⁷ Payactiv, Inc. commented that the definition is “so broad that covered persons will be forced to classify as complaints even minor inquiries, technical glitches, or user errors.”⁸ Lastly, Earnin’s comment letter⁹ discusses the need to treat nuisance complaints differently than genuine complaints.

Recommendations for Tailoring the Proposal

There are many ways the DFPI could further modify the Proposal to address the above concerns; we offer two possibilities here. First, a “material” qualifier could be added to the definition of complaint, as follows:

“Complaint” means a **[material]** oral or written expression of dissatisfaction from a complainant regarding a specific issue or problem with 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.

The industry already has some precedent for this, as FinTech banking partners often focus on “material” or “executive” complaints that signal the potential for actual consumer harm.

Alternatively, Section 1071(a)(1) of the Proposal (which defines what is excluded from the definition of complaint) could be revised to include a category of “nuisance complaint.” “Nuisance complaint” could then be defined to include complaints (a) made for fraudulent, frivolous, or abusive purposes, (b) made without intent to resolve any alleged issue(s), or (c) failing to identify a claimed harm that implicates a California consumer’s financial rights.

Additionally, as discussed above, we also recommend including expressions of dissatisfaction in the Section 1071(a)(1) list of categories excluded from “complaints.”

We recognize that carving out immaterial or nuisance complaints may raise the concern that covered persons could abuse how complaints are categorized. However, this risk can be mitigated by requiring covered persons to keep records of immaterial or nuisance complaints for a certain period of time. That way, the immaterial or nuisance complaints would be documented if any concerns over how a complaint was classified

⁷ Available at: <https://dfpi.ca.gov/wp-content/uploads/sites/337/2022/08/PRO-03-21-Online-Lenders-Alliance-7.5.22.pdf?emrc=456320>

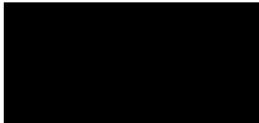
⁸ Available at: <https://dfpi.ca.gov/wp-content/uploads/sites/337/2022/08/PRO-03-21-PayActiv-7.5.22.pdf?emrc=8b4a13>

⁹ Available at: <https://dfpi.ca.gov/wp-content/uploads/sites/337/2022/08/PRO-03-21-Earnin-7.5.22.pdf?emrc=bc4b4e>

later arise. Many of the entities covered by the rule, especially money transmitters, will have onsite examinations by DFPI staff. Immaterial and nuisance complaints could be sampled by DFPI exam staff to ensure compliance with the rule.

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We thank you for the opportunity to comment on the Proposal. Should you have any questions or wish to discuss further, please contact myself or Matt Janiga.



Reginald Young
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Lithic, Inc.

¹⁰ Currently licensed to practice in California.