



January 20, 2023

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

Re: Proposed Rule PRO 03-21 regarding Customer Complaints, Notice of Modification

## I. Introduction

The American Fintech Council (AFC)<sup>1</sup> submits this comment letter in response to the request for additional comment by the California Department of Financial Protection and Innovation (DFPI or Department) regarding modifications to the proposed changes to the California Consumer Complaints process and requirements (Proposed Modifications).<sup>2</sup> We thank the DFPI for the opportunity to provide further comments on the Proposed Modifications.

AFC's mission is to promote an innovative, transparent, inclusive, and customer-centric financial system by supporting the responsible growth of lending, fostering innovation in financial technology (Fintech), and encouraging sound public policy. We believe that the provision of well-regulated, innovative, and responsible services and products by banks and Fintechs is critically important for the financial health of consumers and small businesses. This then creates a more inclusive financial system and contributes to a more competitive financial services landscape. AFC supports a fair financial services system where products are designed in compliance with applicable regulations, where the goal of sustainable access to credit should be present in all lending and servicing components, and where predatory conduct has no place. We believe that responsible innovation can drive fairer outcomes across the board for consumers and small businesses.

AFC members, some of which are headquartered in California, are at the forefront of fostering competition in consumer finance and pioneering ways to better serve underserved consumer segments and geographies. For instance, AFC has publicly supported 36 percent rate caps at state and federal levels, which is a key component of addressing responsible lending. Our members

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<sup>1</sup> American Fintech Council's (AFC) membership spans lenders, banks, payments providers, loan servicers, credit bureaus, and personal financial management companies.

<sup>2</sup> Notice of Modifications to Proposed Rulemaking under the California Consumer Protection Law: Consumer Complaints and Inquiries (PRO-0321), available at PRO 03-21 - [Notice of Modification](#) (PDF). See also, AFC response to original Request for Comment.

are also lowering the cost of financial transactions, allowing them to help meet the demand for high-quality, affordable products.<sup>3</sup>

AFC appreciates DFPI's movement to modify the final rule based upon responses to the original request for comment. We remain concerned about the following items: 1) the underestimation of compliance cost, labor, and timeline, 2) the disclosure requirements, and 3) the proposed definition of "complaints."

- I. AFC urges DFPI to reconsider its compliance cost estimates and to provide an appropriate amount of time for companies to comply with the final rule.

Our members remain concerned that the cost estimates of these processes may not apply the same way to every business and are grossly underestimated. The Department provided an estimate of \$2,500 as an initial cost to implement and \$4,000 ongoing cost once implemented.<sup>4</sup> While the Proposed Modifications represent an improvement over the original rule proposal, we believe that actual costs of implementation remain excessive, and we estimate initial costs would be *at least* \$50,000 to \$150,000 for many companies both initially and on an ongoing basis. Some companies will not be able to implement the Proposed Modifications with existing resources. The high costs of the Proposed Modifications are a consequence of ambiguous or overly broad language in certain provisions as well as requirements that are unreasonably burdensome to implement. We have suggested additional modifications herein (see subsections of this letter below) to bring the DFPI's proposal more in line with its cost estimates.

In addition, the economic impact of the Proposed Modifications goes well beyond the costs of compliance. The Proposed Modifications will have negative business consequences and will put some Fintechs at a competitive disadvantage, and these factors should not be understated by the DFPI. As explained further below, the Proposed Modifications will undermine the ability of companies to effectively market and communicate information to consumers, which will negatively impact retention and acquisition of customers. This is especially true for the unprecedented DFPI proposals that prescribe 12-point font disclosures on webpages and in mobile applications. In addition to costs of compliance, the DFPI should ensure it fully appreciates the business impact to covered persons before finalizing the Proposed Modifications.

Moreover, short timeframes to implement new requirements on top of the strict consequences of non-compliance also exacerbate costs for companies. As such, we strongly urge the DFPI to provide *at least* one year for institutions to come into compliance with the final requirements; anything less is an unreasonably short period of time to implement the scope and breadth of requirements that the DFPI is considering. Also, providing companies with a brief notice and cure period to remedy minor, unintentional issues of non-compliance, will help to address instances where the DFPI's proposal may be vague or unclear, will help keep costs at bay for companies, and is consistent with the approach of other consumer protection laws in California.

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<sup>3</sup> For example, through a variety of business models, AFC members are refinancing higher interest rate credit cards, higher cost student debt, and higher annual percentage rate ("APR") auto loans into lower rate products to help consumers reduce their debt and improve their financial health.

<sup>4</sup> Notice of Modifications to Proposed Rulemaking, *supra* note 2.

Our members welcome an open channel with the Department to continue to address cost estimates, bring better understanding of the business consequences of the Proposed Modifications, and suggest reasonable alternatives that can be made to the complaints and inquiries process in the proposed rule.

- II. It is critical that certain requirements proposed by the DFPI be adjusted to be more feasible if the Department would like to bring implementation costs in line with its estimates.

As stated above, certain disclosure requirements under consideration by the Department are overly burdensome and will have negative business impacts, leading to undue costs to implement. Therefore, we strongly urge the DFPI to re-consider proposals on 1) handling of complaints by live call center representatives, 2) disclosures in 12-point font required to be made in “all written communications” to consumers related to a particular financial product or service, and 3) disclosures in 12-point font required to be posted to every webpage related to a consumer product or service. We believe that these requirements will not assist the DFPI in meeting its consumer protection objectives, and rather, are counterproductive to a consumer’s customer service experience.

1. **Handling of complaints by live representatives:** Our members remain concerned about the call center requirements. We re-state that formally taking complaints over the phone may result in human error, and we suggest these problems would be avoided by adapting the requirement to more closely align with the well-established oral disputes process under Regulation E<sup>5</sup>, whereby institutions can require consumers to provide written confirmation of disputes first provided orally. We urge DFPI to consider alternative methods to respond other than strictly voice calls.
2. **Disclosures in 12-point font required of “all written communications” to consumers:** It is overly burdensome and very costly to apply prescriptive disclosures in 12-point font to every written communication to consumers. Some members estimate that implementation of this requirement would mean updating over 2,000 different communications to its customers, spanning many different modes of communication, including many that, similar to text messages, “are subject to character limitations and generally [are] not the primary mode of communicating important information with consumers.”<sup>6</sup> Methods of communication to consumers can range from social media, blogs, displays, advertisements, affiliate marketing, and bots and communications that are not in control of a covered person. Because such types of communications are not appropriate for the types of disclosures that the DFPI is recommending, the requirement may be more confusing to consumers than it is helpful.

Additionally, requiring covered persons to adhere to a 12-point font size for disclosures will have the unintended consequence of diminishing the effectiveness of the written

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<sup>5</sup> 12 CFR 1005.

<sup>6</sup> California Department of Financial Protection and Innovation, stated objectives were published by the DFPI, in its [“Initial Statement of Reasons.”](#)

communication, is not feasible to implement, and lacks precedent across federal and state disclosure regulations. When including a 12-point font disclosure with other text, (I) the oversized font could inadvertently override the importance of other disclosures and (II) email service providers may filter messages to junk or spam folders when the emails contain varying font sizes, which would lead to negative business outcomes. It is not clear how companies would even adhere to a 12-point font size on mobile devices and applications, the primary method by which many consumers access communications. We are not aware of other federal or state consumer regulations that stipulate a certain font size in disclosures.

Even if the Department continues to believe that the benefit of this requirement outweighs its high costs, the DFPI should work to improve the feasibility of the requirement by:

- (i) exempting certain modes of communication that, in the words of the DFPI, are “not the primary mode of communicating important information with consumers”;<sup>7</sup> and
- (ii) allowing companies to provide a link that leads to further instructions on how complainants may submit complaints. A link allows for there to be a single source to the required language, which would improve the speed, accuracy, and time required to implement this requirement. A link is consistent with the approach taken by California in other regulations (e.g., the requirement under the California Consumer Privacy Act, allowing businesses to provide a “Do Not Sell My Personal Information” link on the businesses’ website<sup>8</sup>) and by the DFPI in other parts of the Proposed Modifications (e.g., Section 1072(b)(2)); and
- (iii) adopting a “clear and conspicuous standard” for disclosures similar to the approach of federal regulators (e.g., Regulation Z<sup>9</sup>, the Federal Deposit Insurance Corporation’s Official Sign and Advertising Requirements proposed rule<sup>10</sup>) instead of taking the unprecedented step of prescribing use of 12-point font. Additionally, this would be more consistent with the approach in the California Consumer Privacy Act, which does not stipulate a font size for opt-in/opt-out requirements.

3. **Disclosures in 12-point font required to be posted to every webpage:** AFC members also urge DFPI to consider revisions to the website disclosure requirements, which would be required on every webpage related to a consumer product or service. Some members estimate that a single company may have over 500 webpages that would need to be updated to meet this requirement. It is unclear how updating certain webpages, such as those designed to share informational blogs or landing pages with complaint disclosures would enhance consumer protection. Similar to the DFPI’s disclosure requirement for

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<sup>7</sup> Id.

<sup>8</sup> See <https://oag.ca.gov/privacy/ccpa#sectionb>.

<sup>9</sup> 12 CFR 1026.

<sup>10</sup> See Federal Deposit Insurance Corporation, Notice of Proposal on FDIC Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo, available at <https://www.fdic.gov/news/financial-institution-letters/2022/fil22052.html>.

disclosures of “all written communications” discussed in paragraph #2 above, this requirement is also excessive and costly.

Also, similar to the discussion in paragraph #2 above, the requirement for covered persons to adhere to a 12-point font size for website disclosures will have the unintended consequence of diminishing the effectiveness of the webpage, is not feasible to implement and again, lacks precedent across federal and state disclosure regulations.

III. AFC members suggest the complaint definition be adjusted to the following:

“Complaint” means an oral or written expression of dissatisfaction from a complainant regarding a specific problem with a financial product or service, resulting from the acts, omissions, decisions, conditions, or policies of a covered person related to the financial product or service.

We urge the DFPI to revise the definition of complaint to account for the fact that many providers receive complaints and inquiries outside the scope of the provider’s services. For example, this can be seen when a provider that offers business-to-business-to-consumer (B2B2C) services partners with a third-party in the delivery of that service. If the third-party fails to perform its obligations, this could cause the consumer to become dissatisfied with the experience. In the current definition, this would require the provider to report a complaint that is due to the third-party's performance, rather than the provider’s performance. For that reason, we urge the DFPI to revise the definition of complaint to the suggested definition above.

Additionally, the Department should consider excluding from the definition of “complaint” any correspondence sent by a customer through an improper channel – that is, a channel not specifically designated by the covered person. By having customers call a specific number or submit a written complaint through a specific channel, covered persons can easily flag “complaints” under this rule for reporting and tracking purposes, thereby mitigating cost and administrative burden.

## Conclusion

We again thank DFPI for this additional opportunity to respond as it modifies and finalizes this rule. AFC continues to support sustainable access to credit and fostering responsible practice, and fair lending in consumer financial markets. We support a consumer complaints system that will improve business practices, identify pervasive issues, and detect potential violations of applicable consumer protection laws without inadvertently being overly burdensome and harmful to responsible innovative institutions that help consumers.