



April 7, 2023

Department of Financial Protection and Innovation
Attn: Araceli Dyson
2101 Arena Blvd.
Sacramento, CA 95834

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

Dear Ms. Dyson:

On behalf of the American Financial Services Association (“AFSA”)¹ and California Financial Services Association (“CFSA”), thank you for the opportunity to provide comments on the Department of Financial Protection and Innovation’s (“DFPI” or “Department”) March 23 modified proposed rulemaking (PRO 03-21) under the California Consumer Financial Protection Law (“CCFPL”). AFSA and CFSA represent financial institutions of all sizes across many of the industries DFPI oversees. We appreciate the Department’s consideration of our previous comments related to earlier drafts of this rulemaking and support several of the important modifications made to this draft, particularly the narrower disclosure requirements.

As with the previous modification, this modification is again an improvement over earlier drafts; however, portions of the proposed rules would still be incredibly burdensome and require significant operational changes with little added consumer benefit. Many of the rules’ requirements would likely increase costs for consumers due to the necessary expense required to implement the significant changes and the increased costs of doing business in the state. These costs will far exceed the Department’s estimate of \$2500 for initial implementation and \$4000 annually for compliance, with the actual compliance costs several orders of magnitude greater than the estimate.

Burdensome Proposed Complaint Process

The proposed modifications made to Section 1072 would improve some of the problems that previously existed with the proposed rules, but they do not resolve the mandatory creation of a DFPI-specific complaint and response process, which is unreasonable and unduly burdensome on entities already subject to rigorous complaint and response systems maintained by federal agencies, state attorneys general and accreditation entities. Complaints are a valuable tool for improving business, identifying systemic issues, and detecting potential violations of applicable

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

consumer protection laws, and monitoring consumer complaints is a core pillar of an effective compliance management system. Covered persons already have robust processes in place to receive and process consumer complaints. These processes are integrated into existing phone and mail systems—systems with which consumers are already familiar—so a complaint process specific to a single state would require significant changes to numerous company systems for consumers who already know how to contact a company.

Many of the requirements in the rules still fail to take into account existing processes, and implementation would be burdensome and extremely costly for large and small businesses alike. We reiterate our request from previous comments that the rules provide more flexibility for covered persons to operate within their existing complaint processes appropriate to the size and complexity of their business, which will streamline implementation and speed up response times for consumers across company segments.

There is no benefit to consumers if covered persons are required to create specific complaint processes for California consumers alone. Not all financial products and services require capturing the consumer’s state of residence. Therefore, discerning California residents from the rest of the population is not feasible in all cases. There should be language added such that companies are not required to determine the consumers state of residence for the sole purpose of complying with these rules. Covered persons already have processes in place to address complaints to comply with state and federal requirements and regulatory expectations, and because the entities want to provide good customer service. Requiring covered persons to put into place very specific procedures and processes to comply with one state’s complaint handling rules will likely add no value to consumers and will only serve to increase the cost of doing business and negatively affect consumers (for example, through increased cost of doing business, which may be passed on to customers).

Section 1071: Definitions

While the proposed modifications have somewhat narrowed the definition of “inquiry,” we continue to have concerns with its broad scope, which could still require extensive tracking and recordkeeping of mundane requests. Although our recommendation is to strike the entirety of Section 1073—as we outline below—which would make this definition unnecessary, if Section 1073 remains, then we reiterate our request that the definition of “inquiry” be narrowed to include only those questions materially affecting a consumer’s understanding of a financial product or service.

Section 1072: Complaint Processes and Procedures

Part (b)

We applaud the Department’s change to Part (b)(1) allowing for an annual notice and that such disclosure may be made electronically if the consumer has agreed to receive electronic communications. The previous version of the rules provided an exception to disclosure in written communications for electronic text messages such as iMessage, Short Message Service (“SMS”), and Multimedia Messaging Service (“MMS”). In the event that the initial written communication

with a consumer is via electronic text message, we request an exclusion from the disclosure requirements similar to the previous version of the rules.

[The changes to Part (b)(2) are an important step in the right direction, and we support limiting the requirement for the link to being only on the website's home page or main contact page. However, we believe the requirements that a font be at least as large as the largest text on the page is overly prescriptive and would far exceed similar web disclosure requirements imposed under other state law. Companies operate on a national basis, serving consumers who are not California residents as well as California consumers. A requirement to so prominently place California-specific contact information on the page could cause confusion for customers who are not California residents, delaying responses and handling of complaints. For instance, disclosure of a consumer's privacy rights under the California Privacy Right Act ("CPRA") is limited to use of "a font size and color that is at least the approximate size or color as other links next to it that are used by the business." Accordingly, we request that the Department limit the font and size requirements to the same standard as the one recently adopted under the CPRA.

Part (c)

While we appreciate the modifications to Part (c)(3) removing the requirement that voicemail be available to consumers when a live representative is unavailable to take a complaint, we are still concerned about the live-caller requirement generally. Many companies may not have dedicated customer call centers and instead primarily communicate with consumers via electronic means. For these companies, implementation of such a requirement would be among the costliest provisions in the rules and far exceed the Department's \$4000 compliance cost estimate. Consumers have many options for submitting complaints and there is little benefit to justify a new costly dedicated live representative process solely for accepting a single state's complaints. At the very least, this provision should be clarified to require intake of complaints via phone only if the covered person provides general customer service via phone.

Part (c)(4) requires that the complaint process be available in certain languages other than English and even issue the final response in that language. While there are requirements to provide a contract in the language when applicable, there is no statutory requirement to provide servicing in these languages. While making a contract available in another language requires a single translation, this provision would require covered entities to keep costly translation vendors on retainer in order to be prepared to accept and respond to a complaint in any of the identified languages. This requirement should be removed from the rules.

Part (d)

Part (d) outlines a process for written acknowledgement of all complaints. This would be an unnecessary and burdensome process. The majority of consumer complaints are made by phone, during which the covered person advises the complainant that they are logging a complaint. Any additional written acknowledgement does not add value and would only take time away from covered persons working to resolve the complaints. Dedicating resources to acknowledgments rather than resolving the complaint does not benefit the consumer who made the complaint. We believe the most appropriate solution is to eliminate the requirement for written

acknowledgments altogether. For instance, a written acknowledgement for a complaint that is received and resolved over the phone would not be appropriate and would just be an administrative burden. Customers are of course free to contact the covered entity to follow up on the status of a complaint. Additionally, given frequent postal service delays, a written acknowledgement that arrives after a complaint has been resolved may actually confuse the consumer and lead them to believe the complaint is still open. At the very least, the rules should provide additional flexibility that allows the covered person to make the acknowledgment by e-mail, postal mail, *or* telephone, at the entity's discretion, regardless of how the complaint was received.

Part (f)

We are concerned about the Department's modifications to this section. First, the requirement that the designated officer be "ultimately accountable for the effective operation and governance of the complaint process" is vague, and it is unclear what type of liability is being imposed on this designee. Second, the new power authorized to the officer to broadly change, amend or rescind an organization's policies and decisions can conflict with an organization's governance structure and may vitiate risk-management within an organization. Broader policies and procedures of other units within an organization, however, typically need input from several parties (Legal, Compliance, Risk, IT, the business line itself, etc.). Putting all the power for controlling policies throughout the entire organization in one individual runs counter to risk-management requirements. We recommend instead that the officer (or their designee) has the authority to act in whatever manner is required to resolve a complaint and have authority to change policies and procedures covering the complaint process.

Part (g)

Importantly, the process to review and respond to a complaint takes time, as a company must investigate, refer it to the relevant company segment, properly identify the consumer if incomplete information was provided and ensure a thorough understanding of the issue before responding. A short time frame prioritizes a response over proper investigation and appropriate resolution. While we appreciate the modification from calendar to business days, we believe the proposed response timeframe is still too short, and we reiterate our previous request that the resolution timeframe be at least 30 business days for resolution of all complaints, with a possible 30-business day extension. Further, a written response resolving a complaint may not make sense in all cases, and communication by phone may be appropriate and more immediate than a letter delivered through the mail. For this reason, we request flexibility to provide the final response either in writing (including email) or over the phone, at the covered entity's discretion. Additionally, we request an exception for rare circumstances where a resolution may extend beyond the required timeframe, if the covered person maintains documentation explaining the delayed resolution.

We appreciate the Department's consideration of our previous comments and the change to Part g(1)(A) changing the timeframe to "no later than," as opposed to "within." We are concerned about the new language allowing an organization to take more than 15 days to come to a final disposition only if it has an "objective, good cause." If the customer disagrees with the need for

additional time, who decides what is an “objective, good cause” and how? An angry customer will likely not find any cause for delay to be a “good” one, creating additional complaints. We request this modification be removed from the rules.

We support the modification to section (g)(3) for instances where the covered entity has an obligation to report suspected fraud or abuse and appreciate the Department’s consideration of our previous request for this change. Additionally, we believe further clarification is needed related to instances when an entity needs to take ordinary adverse actions, completely unrelated to the complaint, such as declining a pending application due to ineligibility, or closing or reducing a customer’s revolving line amount due to deteriorating creditworthiness, etc. These ordinary and necessary actions, which may fit the definition of “adverse actions” under Reg. B, should not be treated as retaliatory, if unrelated to the complaint. Accordingly, we respectfully propose modifying the text to read as follows:

“This provision does not prevent the covered person from taking appropriate action to respond to threats of violence, and other illegal conduct by the complainant, and instances where the covered person has a legal obligation to report suspected illegal conduct, or to take normal actions in the course of servicing or managing an account, enforcing contractual provisions, processing an application or customer request, or other actions in the ordinary course of business.”

Part (j)

We have significant concerns about the report required in part (j) and reiterate our requests from previous comments. First, DFPI must explain the statutory authority for requiring periodic reporting. DFPI cites Cal. Fin. Code § 90008 as the basis for this rulemaking. That section requires “timely responses” to consumers and to the Department, but makes no reference to periodic reporting to the Department, let alone making the report available to the public. In addition to explaining its authority, DFPI should explain why such reporting and public release thereof are necessary for public protection. Even with the change from quarterly to annual reporting, this section is among the most burdensome of the rules.

We recommend DFPI require instead an annual certification, rather than a full report, indicating that covered persons have engaged in the required internal review as specified by the DFPI which identified opportunities for correction where applicable, and engaged in remedial training, as necessary.

As stated in the Department’s Notice of Proposed Rulemaking:

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

A certification requirement, rather than requiring a full report, is a reasonable alternative that would carry out the purpose of the DFPI's interest in ensuring internal monitoring and remediation efforts are being undertaken without requiring the full production and invasive requirement of a detailed report, and the privacy and other risks associated with that data being made public. The proposed extensive annual reporting will be costly and unduly burdensome.

The demand to make an entity's detailed internal proprietary information, processes, and remedial efforts undertaken to address operational issues, and produce a detailed quarterly report that is not protected from third-party production, is objectively unreasonable. Many pieces of information required to be disclosed could include confidential information, trade secrets, inside information under securities laws, or even attorney-client privileged information, so this section would require public release of sensitive company information. While the Department in Section 1075 recognizes the need to protect certain sensitive information, the public reporting provisions of part (j) abandon this principle and leave covered entities at significant risk. Public release of this information could expose covered entities to abusive frivolous litigation, potential fraud targeted at the complaint process and competitive disadvantage from competitors. Additionally, many of the categories outlined in (j) are vague or duplicative. We request that the types of complaint categories be structured consistent with the CFPB's complaint reporting processes.

Section 1073: Inquiry Processes and Procedures

We reiterate our concerns outlined above regarding the broad definition of "inquiry" and recommend striking the entire section due to burdens imposed by the requirements with little consumer benefit. Extensive tracking and disclosure requirements for mundane inquiries that are immaterial to the consumer's understanding of a financial product or to a covered entity's operations do not serve consumers and only further tie up resources that covered entities should be devoting to responding to and resolving consumer complaints. Given the broad definition of a complaint, issues of potential concern will be logged and tracked as complaints, with trends being identified and addressed. Additionally, we are concerned that the entire inquiry process may be too cumbersome for customers. Some customers may just want a quick clarification to their question without having to provide all the information required in the rules. It is also unlikely that a customer will understand the nuances between an inquiry and a complaint, nor will they need to, when their chief concern is getting their issue resolved or getting the information they need. To the extent that the provisions of Section 1073(b) requires determination whether an inquiry is a complaint, we recommend aligning the requirements of this section with the modified definition of "complaint" in 1071 to ensure it covers a "specific issue or problem with" a financial product or service.

Effective Date

Even with the positive modifications, the proposed rules would still require numerous updates to existing operational systems, including changes to contracts with third-party service providers, website changes to accept and promote complaint submissions, and training staff to accept and investigate complaints in compliance with the rules. Therefore, we reiterate our request that the final rules include a delayed effective date, at least 12 months after adoption of the final rule, which will allow affected financial institutions adequate time to implement the required changes.

Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact us.

Sincerely,



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