



April 7, 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 Second Modification

Introduction

The American Fintech Council (AFC)¹ 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 (Second Proposed Modification).² We thank the DFPI for the opportunity to continue the conversation on this rulemaking process.

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

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

² Notice of Second Modification 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 responses to original and first Modified Request for Comment.

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

The AFC appreciates the DFPI's responsiveness to certain issues we previously raised regarding the rules proposed on consumer complaints and inquiries. However, we remain deeply concerned about the business costs and implications of the new proposals in the Second Proposed Modification being considered by the DFPI. In particular, the DFPI's proposal that certain web pages have a "clearly indicated link" with lengthy prescribed language that appears in "font at least as large as the largest text on that [web]page" does not reflect the practical realities of how digital-only firms design web pages to drive traffic and clearly convey information to consumers. Our members also remain concerned around the call-center requirements and the complaints and covered persons definitions.

- I. AFC urges DFPI to avoid unprecedented and untested website disclosure requirements that will result in costs that exceed the DFPI's own stated estimates.

The Department's new proposal in the Second Proposed Modification to require lengthy text to appear in a link in "font at least as large as the largest text" on certain web pages will alone impose costs on companies that are well beyond the DFPI provided estimates of initial costs of \$2,500 and annual costs thereafter of \$4,000. How information is presented on web pages and mobile applications are the lifeblood of digital-only firms, which constitute a large portion of AFC's membership. Digital-only firms spend considerable time and dedicate significant resources on developing website content and layout, with the objective to create positive and simple user experiences. The DFPI's proposal to require a link with lengthy language that appears in outsized font sizes on certain webpages threatens the careful efforts that companies have taken to present content in accessible and easy-to-read formats.

There are two important concerns with the Department's proposal on this issue. First, DFPI is proposing that certain web pages include a link with certain language ("*California Residents: Click here for information about submitting a complaint to [insert covered person's name] or to the California Department of Financial Protection and Innovation*") that is far too lengthy to be appropriate for a website link. Second, DFPI is proposing that the link language appear in font size as large as the largest font on certain web pages, which does not consider the reasonableness of such a link appearing in the same size as company logos, website headers, and other font design choices on web pages that are intentionally designed to facilitate user experiences.

Such a requirement would mean that companies are forced to decide between two undesirable and very costly options:

- a) Displaying a 22-word link as required by DFPI in outsized font, in 36-40 point font in some cases, on certain pages would result in negative business consequences and would diminish the effectiveness of web pages for digital-only firms. Outsized fonts relative to other font sizes would: distract consumers,

³ 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.

override the importance of other disclosures, and generate confusion for customers who do not reside in California. This would compromise the productiveness and effectiveness of the page and would most certainly lead to cost in the form of negative business consequences that cannot be understated.

- b) Alternatively, to avoid the negative business impact of displaying an outsized font size for a lengthy link, companies could be forced to wholly re-design web pages to ensure consistency and integrity of their web pages and font sizes to avoid negative business outcomes. Disclosure requirements that could result in companies being forced to redesign web pages is unreasonable and would be very costly (about 100x or more than the costs intended by DFPI).

We urge DFPI to avoid unprecedented, unreasonable and costly approaches to website disclosures. We believe that DFPI can be more effective in achieving its intended objectives to enhance consumer protection and bring more transparency on how to file a complaint in California by revising its proposal in line with the following recommendations:

- a) DFPI should simply require that companies provide a link on their website that provides instructions to California residents on how to file a complaint. DFPI could potentially require that this link be displayed in a “clear and conspicuous” manner. This approach would be consistent with the approach taken by California in other regulations (e.g., the requirement under the California Consumer Privacy Act⁴, allowing businesses to provide a “Do Not Sell My Personal Information” link on the businesses’ website) or by federal regulators (e.g., the requirement for “clear and conspicuous” disclosures under Regulation Z⁵ and the Federal Deposit Insurance Corporation’s Official Sign and Advertising Requirements⁶ proposed rule). These approaches are already in place and are tested and reliable.
- b) DFPI should not prescribe 22-word language to appear in a website link. DFPI should give companies flexibility regarding how to label the link, or alternatively, should set forth link language that is of appropriate length for a website link (i.e., does not exceed 6 words).

Should DFPI decide to embark on its own approach to prescribe outsized font sizes and lengthy link language for companies’ websites, it should first conduct detailed impact studies to: 1) assess the potentially negative consequences to website functionality and user experiences; 2) consider whether the benefits of such requirements are outweighed by the costs; and 3) reevaluate the implementation costs of the Proposed Rule to be more in line with actual costs. Based on the information provided by DFPI in its “Notice of Second Modification”, which was released alongside the Second Proposed Modification, DFPI has not provided any stated rationale or justification for imposing the requirement, nor has it indicated the potential impact to implementation costs.

⁴ See <https://oag.ca.gov/privacy/ccpa#sectionb>.

⁵ 12 CFR 1026.

⁶ 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>.

- II. AFC appreciates the adjustments made in the Second Proposed Modification regarding call center requirements, but we remain concerned that our members under this improved proposed regime will still face difficulties addressing consumer needs.

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 E⁷, 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, such as electronic mechanisms that we have suggested in our previous comment responses to the Department on this rulemaking.

- III. Our members urge DFPI to continue to consider adjusting the definition of “complaints.”

We would like to reiterate our previous response letters and 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. “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. 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, we restate that 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.

- IV. We request that the DFPI clarify the applicability of the proposal to covered persons subject to other regulatory regimes.

Certain members of AFC do not directly offer or provide consumer financial products and services but rather enable the provision of consumer products and services as third-party service providers to nationally chartered banks, which are exempt from the proposal. Nationally chartered banks are subject to federal regulatory and supervisory regimes that oversee, among other things, banks’ consumer complaints processes of which third-parties may only be acting as a servicer of complaints. As such, we request that the DFPI consider whether such third-party service providers should be exempt from the proposed rulemaking in cases where third parties are only supporting nationally chartered banks in offering or providing consumer financial products and services.

⁷ 12 CFR 1005.

Conclusion

We again thank DFPI for this additional opportunity to respond as it modifies and finalizes this rule. Our members welcome an open channel with the DFPI to continue to address cost estimates, bring better understanding of the business consequences of the above-mentioned proposals, and suggest reasonable alternatives that can be made to the complaints/inquiries process and definitions in the Second Proposed Modification.