

April 7, 2023

Mr. David Bae and Ms. Araceli Dyson
Department of Financial Protection and Innovation
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SUBJECT: Comments on Proposed Rulemaking PRO 03-21

Dear Mr. Bae:

The California Chamber of Commerce (CalChamber) appreciates the continued opportunities to comment on the Department of Financial Protection and Innovation's (Department) proposed rulemaking number PRO 03-21, governing "Consumer Complaints and Inquiries" within the California Consumer Financial Protection Law (Proposed Regulations).

CalChamber is the largest broad-based business advocate to California government. Our membership represents one-quarter of the private sector jobs in California and includes firms of all sizes and companies from every industry within the state. CalChamber is committed to helping California businesses thrive while complying with complex laws and regulations.

We appreciate the Department's continued efforts to respond to stakeholder feedback and revise portions of the Proposed Regulations. However, several issues remain where CalChamber believes that the Proposed Regulations create an undue burden on businesses.

A. The Live Operator Requirement Remains Burdensome and Inefficient

As we stated in our previous comments, the live operator requirement remains overly burdensome and inefficient. The Proposed Regulations do not provide sufficient flexibility for businesses to address consumer complaints and inquiries associated with financial products and services. Rather, they would require covered businesses to maintain a dedicated telephone line to be staffed by a live representative. This requirement, with no alternatives, does not reflect best practices and neither does it reflect how customers currently engage with businesses. The revision only requiring 20 hours per week of a live operator does not significantly reduce costs and raises more questions about compliance and a good customer experience.

Specifically, even with reduced hours, this provision would still require dozens of representatives to manage a dedicated California phone number. There is also a concern that it would be difficult if not impossible to operate a call center for only 20 hours and still ensure a good consumer experience. This could result in complaints about a business' complaint process. The Department does not include a new cost estimate for this, but it is still well beyond the \$4,000 annual cost to comply previously cited by the Department.

As we have stated previously, we understand that the Proposed Regulations are aimed at ensuring timely responses to consumer complaints and inquiries. However, the existence of a live representative does not guarantee timely responses; rather, it can inadvertently lead to backlogs when large numbers of consumers call in at the same time. Webforms and other programs allow consumers to describe their grievances nearly instantaneously, and thus allows both the consumer and business to move toward a resolution more quickly.

We also understand that the state and Department has an interest in ensuring consumers have contact with a person during the complaint process. The requirement to provide consumers with a contact person upon receipt of a complaint, which is already included in the Proposed Regulations, addresses this concern. We renew our request that the Department remove the requirement for a "live representative" and instead

allow businesses to choose the method by which consumers can submit complaints and inquiries that is more tailored to the ways consumers currently engage with the business.

B. Potential Impacts on Innovation

CalChamber renews our concern that the Proposed Regulations will have an inadvertent impact on innovation and new participants in the financial services market. The Proposed Regulations would apply to any business that is required to be licensed by or registered with the Department. However, the Department has little in the way of regulations specifying who should be licensed or registered but possesses broad statutory authority to require licensure or registration. In this sense, a business could introduce a new product that triggers registration, and as a result, the entire business would now have to comply with the Proposed Regulations. The expensive and prescriptive complaint process raises hurdles faced by new businesses or existing businesses that wish to expand into providing financial services. In turn, this may reduce the ability for these companies to provide online services that are potentially free or very low cost for consumers because the company would have to generate a California-specific call center. The Department should ensure that the Proposed Regulations do not operate as a bar to innovation within the financial services industry. For example, exempting free direct-to-consumer services from the costly complaint procedures in the Proposed Regulations would assist in supporting innovation and ensuring access to free services for California consumers.

C. Notice Timelines Should Match Federal Timelines

The Proposed Regulations require that businesses respond to a written complaint within 15 business days. However, this is not consistent with federal law, which presents compliance challenges for businesses that must interact with federally regulated entities. Under the federal Fair Credit Reporting Act (FCRA), companies have 30 days from receipt to respond to consumer credit disputes. While we acknowledge that the Department would allow for an additional 30 days to investigate if requested, using the federal timeline as a standard would assist businesses in devoting time and resources to investigations rather than attempting to meet two separate deadlines. Furthermore, as mentioned previously, some companies receive a consumer complaint, but then must request information from a federally regulated entity in order to respond to the complaint. Having the same 30-day deadline to respond will help make sure that both entities can comply and ensure timely response to the consumer.

Relatedly, the requirement of providing acknowledgement of a complaint within five days of receipt is duplicative and burdensome considering that the Proposed Regulations currently also require a formal response within 15 business days of receipt. Again, we are concerned that this diverts a company's staff time and resources away from investigating complaints and focuses it on paperwork that may be confusing or frustrating for the consumer. Additionally, this additional mail traffic has negative impacts on carbon footprints. Based on the number of California-originating complaints received by the Consumer Financial Protection Bureau (CFPB), sending a five-day acknowledgement for every complaint would produce at least 3,922 pounds of CO₂ annually.

D. Additional Suggestions

In addition to the above areas, we have the following suggestions and concerns with specific provisions in the Proposed Regulations. We would appreciate your consideration of these items:

- Section 1072(b)(1): While providing direction, and a means, to consumers that informs them how to file a complaint is reasonable, requiring a company to issue an annual notice electronically, or otherwise, is overly prescriptive. Additionally, it is burdensome to do, particularly when a company has a large customer base.
- Section 1072(f): We are concerned that this provision will create personal liability for company officers if a consumer believes that the complaint process was not effectively operated and governed. The phrase "ultimately accountable" is not defined and creates serious concern about an officer's potential personal liability. The department already has the ability to enforce the

Proposed Regulations without creating personal liability. It is not clear why personal accountability would be necessary for these regulations.

- Section 1072(g)(2): Including "a summary of the steps taken to respond to the complaint" in the written response to a complaint will result in prolonged investigation and a continuation when responding to a consumer. We would recommend removing this requirement from this section. Also, including the statement related to submitting a complaint to the Department on all resolution responses could be viewed as the company refusing to be helpful and directing the consumer elsewhere. It would be preferable to include the statement only if the consumer expresses dissatisfaction with the resolution itself and/or explicitly requests a different escalation path.
- Section 1073(c)(1): Given the overly broad definition of "inquiry" in Section 1071, the requirement to "respond to all issues raised by the inquiry within ten (10) business days after receiving the inquiry" overly burdensome, considering the volume of inquiries a company may receive each day from each consumer through various communication channels. We would request additional time to ensure a full response to all issues raised.
- Section 1072(j)(14): We appreciate the addition of a nuisance category to the annual reporting required by covered persons. We would also like to see an "incorrect company" complaint type added for situations where a consumer contacts the incorrect institution. This would be consistent with CFPB complaint handling options. Like with the CFPB, response requirements should be different for this complaint type because the covered person would not be in a position to fully investigate or take corrective action on such a complaint.

Thank you for considering our comments on the Proposed Regulations. Please contact me if you have any questions.

Sincerely,



Brenda Bass
Policy Advocate
California Chamber of Commerce