

April 28, 2023

Mr. David Bae and Ms. Araceli Dyson
Department of Financial Protection and Innovation
2101 Arena Blvd.
Sacramento, CA 95834

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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. We also appreciate the Department staff's willingness to engage with us on some of our specific questions related to this rulemaking. Based on those discussions and the most recent revision of the Proposed Regulations, we offer the following comments.

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.

We reiterate our concerns that 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.

We understand that the state and Department has an interest in ensuring consumers have contact with a person during the complaint process, particularly when some consumers are unable to engage in a text-based or online option. We suggest that, short of removing a live operator requirement, the Department consider including a compliance option that exempts certain online-only services from the live operator requirement. This would exist for services where the entire experience is online. We believe this would not present accessibility issues, because the consumer would have initiated the relationship in an online, text-based setting. This, coupled with the requirement to provide consumers with a contact person upon receipt of a complaint, which is already included in the Proposed Regulations, would fully cover a concern that consumers should have contact with a person at some point in the complaint process.

Again, short of allowing businesses the flexibility to provide effective and cost-conscious methods of consumer interactions, including exceptions to the live operator requirement for wholly online offerings and experiences will help reduce costs without impacting customer experience.

B. Notice Requirements Should Comport With Federal Law

In our previous letter, we suggested removing the requirement of providing a written acknowledgment of a complaint within 5 days of receiving the complaint. We understand that the intention of this requirement is not to require production of a new written record in most cases (unless the complaint is initiated orally). First, additional clarification of this intention would be helpful in guiding compliance. For background, “written” acknowledgment has been interpreted to mean a new written document in the context of other financial services laws, including the California Fair Debt Buying Practices Act, the federal Fair Debt Collection Practices Act, Fair Credit Reporting Act, ESIGN, and Gramm-Leach-Bliley Act. For entities regulated by the federal laws listed here, the business must send documents in physical format unless the consumer provides full ESIGN consent. To get ESIGN consent, the business must email the consumer, and the consumer then needs to acknowledge back via email that they are willing to receive electronic communications. It is not a simple process and would be extremely burdensome to do this and process ESIGN consent within 5 days for all consumers. For those consumers who do not give ESIGN consent, then the business would still be obligated to mail a written letter by day 5.

Given these constraints put in place by federal law, it would be helpful if the Department modified the 5-day receipt acknowledgement to state that it is sufficient for a company to document in its system that a complaint has been made. Furthermore, if the Department’s concern is that we document oral complaints have been received, instead of the 5-day written acknowledgement, we request that the Department replace that language and instead require that companies: (1) document receipt of verbal and written complaints in their system of record; and (2) state on the phone when a consumer is providing an oral complaint that we acknowledge receipt of their 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