

September 17, 2021

Sandra Sandoval, Legal Division
Department of Financial Protection and Innovation
300 S. Spring Street, Suite 15513
Los Angeles, CA 90013

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

Dear Ms. Sandoval:

On behalf of the American Financial Services Association (AFSA),¹ thank you for the opportunity to provide comments on the Department of Financial Protection and Innovation's (DFPI) August 18 proposed rulemaking (PRO 03-21) under the California Consumer Financial Protection Law (CCFPL). AFSA represents financial institutions of all sizes across many of the industries DFPI oversees. We believe clear rules that take into account existing laws benefit consumers and financial institutions alike, and we appreciate the Department's consideration of AFSA's previous comments related to the CCFPL. As drafted, the proposed rules would be incredibly burdensome and require 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.

General Comments

Complaints are a valuable tool for improving business, identifying systemic issues, and detecting potential violations of applicable 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. We believe the rules should 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. We also request added flexibility in the event of a frivolous complaint, instances where the consumer is dissatisfied with a response but continues to complain about the same issue, or where the complaint has no basis or makes no sense.

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.

For instance, several provisions of 90008.3 (c) require review of the complaint by certain specified staff within a company. Many companies have dedicated customer relations or complaint handling teams who work with the business units as appropriate to handle complaints. The regulations should not specify who within the business should handle a complaint or how a business should divide up work, as the company is best suited to determine appropriate allocation of work and duties. Additionally, these rules would be particularly burdensome for covered persons operating in California and other states by requiring California-specific processes and web forms that will be costly to implement and integrate into existing systems.

We are also concerned about customer confusion for credit disputes. Creditors, in many cases, provide a dispute address on their invoices and elsewhere to provide a Fair Credit Reporting Act (FCRA) address for disputes, but maintaining a website is inconsistent with FCRA requirements. If a website complaint portal is available to consumers, they may believe they can send credit disputes electronically to furnishers of information to credit reporting agencies. Unless the consumer follows the requirements set forth in the FCRA, a customer's credit dispute may not be considered a credit dispute, and the consumer may not receive the protections the FCRA provides if the dispute is not submitted as required under the FCRA.

Response Timeframes

Across the board, the response/processing times required by the rules are too short, overly burdensome and not feasible in practice. 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.

First, all timeframes should be changed to reflect business days rather than calendar days. With some requirements in the rules as short as three (3) calendar days, a holiday weekend could encompass the entire timeframe allowed by the rules without a single business day passing. Calendar day timeframes can be particularly challenging in cases where postal mail is used. Further, the various three (3) day requirements throughout the rules are far too restrictive and not a feasible response time, even if adjusted to business days. For such instances, we recommend these requirements be changed to ten (10) business days.

Sometimes complaints require escalated review or multiple layers of review, and three (3), seven (7), or even fifteen (15) days can be too tight of a time frame to respond within. For this reason, we also recommend extending the other various timeframes within the rules so as to provide covered persons with at least thirty (30) days to investigate and respond to verified complaints with an opportunity to request a fifteen (15) day extension if needed. This timeline would satisfy business needs regardless of type of business or product, while still providing consumers with a timely response to their concerns.

Rule 90008.2: Definitions

The definition of "inquiry" is overly broad and would encompass questions that are well outside the scope of the complaints team. The broad definition would even require extensive tracking,

recordkeeping of questions as mundane as requests for mailing addresses or operational hours of branch offices. We recommend that this definition be narrowed to include only those questions materially affecting a consumer's understanding of a financial product or service.

Rule 90008.3: Complaint Processes and Procedures

Section (a)(2) would require disclosure of the complaint procedures in all written communications with the consumer. This requirement is overly broad and would include all servicing letters, e-mails and SMS messages with a consumer. In many instances, such as SMS where there are character limitations, or for certain servicing communications, this requirement would not be feasible to implement, particularly for a process specific to a single state. Accordingly, we recommend disclosure of the complaint procedure only be required on the website; in the loan agreement, initial written communication with the consumer, or periodic written statements; and in retail locations.

Section (a)(5) requires that the complaint process be available in the language of the consumer's contract with the covered person, but this requirement seems to be inconsistent with other sections of California law that require a contract be in English with translations available.

Section (b) outlines a process for receipt and acknowledgement of complaints. As with other sections of the rules, the response timeframes are too short to be feasible. Additionally, the prescriptive method of the acknowledgement is neither necessary nor customer friendly. We believe the most appropriate option would be additional flexibility that allows the covered person to make the acknowledgment by e-mail, postal mail, or telephone regardless of how the complaint was received. For instance, a representative who accepts a complaint by phone may not have immediate access to the unique complaint tracking number at the time the consumer makes the complaint and would need to call back the consumer to acknowledge and provide it over the phone.

We also have significant concerns about requiring disclosure of the full name of a company representative who can receive complaints. Representatives sometimes face threats of violence, so for safety and privacy reasons, it would be more appropriate to disclose only the department that processes the complaints. This approach would better reflect the fact that complaints are often handled by multiple employees, rather than a single point of contact, which speeds up processing and response times.

The procedure outlined in section (c)(1) present similar concerns to the disclosure of the representative name in section (b). A decision not to investigate may be made by a team of individuals, rather than a single person. We believe it would be better to document why a decision was made, rather than who made it. Additionally, we believe there should be more flexibility regarding who conducts the review to allow for review by employees with knowledge of the service and operations, as opposed to the people who are responsible. This would allow an independent employee of the covered person to double check the work of the people providing the service to ensure those responsive for the service and operations acted appropriately. We also request clarification in (c)(1)(C) that not all corrective action results in an account adjustment, credit, or refund. For example, if, during an investigation, the covered person reviews a prior

telephone conversation and notes the representative didn't have a friendly tone, this feedback may be given to management for coaching the representative but doesn't result in account adjustments.

We are also concerned about the requirement in section (e)(1)(B) that shortens the response timeframe for consumers claiming financial hardship. As with other sections, the short timeframe is not feasible. Additionally, what constitutes financial hardship is not clear and is ripe for abuse of the standard. Because of the opportunity for abuse, and because the process should provide for a timely response to all complaints, we request removing the shorter timeframe entirely, or at the very least, flexibility for the covered person to request specific proof of any alleged financial hardship and an extended timeframe for obtaining the proof.

While we understand the intent of section (e)(3) to prevent consumers from facing adverse actions in retribution for complaints, we believe additional clarification is needed. Some complaints are attempts to commit fraud against the covered person or a complainant may express an intent to commit violence against a third party or to themselves. Some complaints also indicate threats of violence against the covered person's representatives, or the complainant is engaging in abusive conduct against the covered person's representative (i.e. using racist, sexist, homophobic language directed at an employee). This provision may interfere with a covered person's ability to protect its employees or third parties. In such instances, the covered person should be allowed to respond appropriately, even if the action might be deemed adverse. Additionally, the customer may be requesting cancellation of the contract, or the covered person may decide to forgive/waive a debt; such remedies should not be considered adverse cancellation in violation of this provision.

For the requirements of section (f), we have small concerns with several of the provisions:

- (f)(2) a covered person may not have the email address of each complainant, and if the complainant is not a customer, they may not have all the other contact information listed either.
- (f)(5) the name of the representative who documented the complaint would not be available for a written or electronically submitted complaint.
- (f)(11) for the name of the person who decided not to investigate, we reiterate our concerns outline regarding section (b) above.
- (f)(14) we request clarity whether it would be sufficient for the system of record to include the contract and other materials or would they need to be separately saved in the complaint process/tool? Saving it separately would seem like additional, duplicative work and resources.

We have significant concerns about the report required in section (h). First, extensive quarterly reporting is costly and burdensome. We recommend instead an annual or semi-annual reporting requirement. Second, many pieces of information required to be disclosed could include confidential or even attorney-client privileged information, so this section would require public release of sensitive company information. We request that any report available to the public exclude sensitive information. Third, many of the categories outlined in (h)(12) are vague or duplicative. We request that the types of complaint categories be structured consistent with the CFPB's complaint reporting processes.

Rule 90008.4: Inquiry Processes and Procedures

We reiterate our concerns outlined above regarding the broad definition of “inquiry,” disclosure of the name of the representative taking inquiries, and details to be maintained in the written record. Additionally, we are concerned that the entire inquiry process may be too cumbersome for some customers. Some customers may just want a quick clarification to their question without having to provide all the information required in the rules.

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 me at 202-469-3181 or mkownacki@afsamail.org.

Sincerely,



Matthew Kownacki
Director, State Research and Policy
American Financial Services Association