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Via Electronic Mail To: regulations@dfpi.ca.gov
Cc: David Bae, Bae@dfpi.ca.gov

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

Re: Notice of Modification to Proposed Regulations: CCFPL Consumer Complaints and Inquiries (PRO 03-21)

To whom it may concern:

The Consumer Data Industry Association ("CDIA") is pleased to offer comments to the California Department of Financial Protection and Innovation ("Department") related to the Notice of Modification to Proposed Regulations ("Notice of Modification") concerning complaints and inquiries under California Financial Code Section 90008, Subdivisions (a), (b), and (d)(2)(D) ("Proposed Regulations") of the California Consumer Financial Protection Law ("CCFPL").

Consumer Data Industry Association ("CDIA") is the voice of the consumer reporting industry, including the nationwide consumer reporting agencies, regional and specialized consumer reporting agencies, background check and residential screening companies, and others. CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals and to help businesses, governments and volunteer organizations assess risk and avoid fraud. CDIA members help to ensure fair and safe transactions for consumers, facilitate competition, locate crime victims and fugitives, reunite consumers with lost financial assets, help tenants secure apartments, assist employers in the hiring process and expand consumers' access to financial and other products suited to their unique needs.

CDIA members are concerned generally about the prescriptive nature of the Proposed Rules and resulting compliance costs that impact entities and their affiliates and their ability to provide online services and serve consumers well.

CDIA's Interest in the NPRM

CDIA has an interest in the issues raised in the Notice of Modification because its members are entities who will be impacted by the Proposed Regulations even though they seemingly are not directly subject to them. These entities' corporate structures present nuanced issues under the Proposed Rules. Specifically, these entities provide consumer report services as consumer reporting agencies ("CRAs"), as defined under Section 603(f) of the Fair Credit Reporting Act ("FCRA"),¹ which are exempted out of

¹ 15 U.S.C. §§ 1681 *et seq.*

the requirements of the Proposed Rule for these consumer report services. These entities, as CRAs, are required to have reasonable procedures under the FCRA to meet their regulatory requirements, which includes processes for reinvestigating consumer disputes of the accuracy of information contained in the consumer's file ("FCRA Disputes").² They also often provide other services to consumers, some at no cost and offered online, that are not governed by the FCRA ("Non-FCRA Services").

CDIA member entities, and other covered persons, will be negatively impacted by the requirements currently in the Proposed Regulations, despite the explicit exemption for CRAs,³ in a manner that is not equally counterbalanced with consumer benefit. CDIA member entities are concerned that the Proposed Regulations would serve as an alternate channel for consumers to submit FCRA Disputes. Further, a products and services related to consumer reporting are offered solely online and at no cost, the prescriptive nature of the Proposed Regulations may impact the ability to expand free offerings. CDIA offers these comments to the Department to help the Department understand the impact of the requirements in the Proposed Regulations and offer its suggestions with the hope that the Department is able to revise the Proposed Regulations to meet the Problem Statement⁴ identified by the Department while limiting the unintended consequences to consumers and to entities that provide FCRA services and Non-FCRA Services.

CDIA's Comments on Issues Raised in the NPRM

CDIA agrees with the Department that complaint management is often beneficial for consumers and the entities that serve them⁵; however, the Proposed Regulations are so prescriptive that member entities will need to overhaul systems, written procedures, and internal staffing requirements to meet the requirements of handling complaints or inquiries about Non-FCRA Services. Rather, CDIA believes that the rules would be more effective if they allow for covered persons to handle consumer complaints and inquiries in the manner that can be incorporated into the entities' current systems and processes. More importantly, as is discussed in more detail below, the prescriptive nature of several requirements will likely create consumer confusion rather than "improve the quality of financial services and products offered."⁶ Therefore, CDIA respectfully requests that the Department reconsider its rigid approach in favor of a more flexible one that addresses only necessary requirements which will provide benefits to consumers while balancing the size and complexity of the entities that serve them by not mandating the way in which these requirements are implemented.

CDIA appreciates the continued opportunity to provide comment on these proposed regulations and the Department's responsiveness to certain issues previously raised by CDIA. CDIA makes the following additional comments on issues raised in the Notice of Modification, with reference to the Proposed Regulation Section.

² 15 U.S.C. § 1681(b); 15 U.S.C. § 1681i.

³ Proposed Regulations at 1, *see* Proposed Section 1070(a).

⁴ Cal. Dep't of Fin. Protection and Innovation, Initial Statement of Reasons for the Adoption of Rules Under the California Consumer Financial Protection Law: Consumer Complaints and Inquiries (May 20, 2022), <https://dfpi.ca.gov/wp-content/uploads/sites/337/2022/05/PRO-03-21-Initial-Statement-of-Reasons-CCFPL-Complaints-5-2-22.pdf> at 2, section II.

⁵ *See generally*, Initial Statement of Reasons, Section III (Benefits Anticipated from Regulatory Action) at 3.

⁶ *Id.*

1. Cal. Code of Regulations Title 10, Section 1072(b)(2): Website Notice

Revised section 1072(b)(2) of the Proposed Regulations requires that a covered person:

“[P]rominently display, on any web pages with information related to a financial product or services, a clearly indicated link in at least 12-point font that states, “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.” The link shall be to instructions on how complainants may submit their oral and written complaints, including the telephone number, mailing address, and web address for filing a complaint with the covered person and with the Department.”

CDIA recognizes the Department’s revisions to this proposal, specifically changing the placement requirement to make clear to consumers its relation only to covered financial products or services and making clear the notice relates only to California residents. However, CDIA still urges the Department to remove this requirement or, alternatively, permit greater flexibility in displaying this notice.

In contrast to this proposed requirement, the California Consumer Privacy Act, as revised by the California Privacy Rights Act, requires significant consumer disclosures as part of the site’s privacy policy, which consumers are accustomed to finding within a website’s privacy policy. It also permits businesses to include required disclosures in a California resident-specific policy as an alternative. CDIA members provide both covered and exempted (as a CRA) products and services and need greater flexibility in placing this notice so as not to confuse consumers about their rights. Placing this notice on all pages related to a covered product or service is not the best approach because of the large number of pages that may relate to covered products and services. Instead, CDIA believes the best approach is to permit the notice be placed on a webpage relating to covered consumer financial products and services, whether that is the homepage, contact page, or any other page that makes the most sense for serving consumers.

Further, this proposed requirement appears to go beyond the scope of the Department’s authority under the Financial Code.⁷ The Financial Code requires that the Department “establish reasonable procedures to *provide a timely response* to consumers, in writing where appropriate to complaints against or inquiries concerning, a covered person.”⁸ The Financial Code indicates that the Department rules should address the response to consumers; it does not, however, indicate that the Department has the authority to require pre-complaint or pre-inquiry notices to consumers.

2. Section 1072(c)(3): Telephone Number and Live Representative

Section 1072(c)(3) of the Proposed Regulations requires that a covered person:

“[M]aintain a telephone number, which complainants can use to file complaints orally with a live representative. If a live representative is unavailable to take the call, the covered person shall provide complainants with the option to leave a voicemail message

⁷ See Fin. Code, § 90008.

⁸ Fin. Code, § 90008(a) (emphasis added).

with the telephone number for a call back from a live representative within two (2) business days of the voicemail message...”

CDIA urges the Department to remove this requirement or, at a minimum, provide more flexibility for how entities may respond to consumer complaints. The requirement that a covered person have available a “live representative” may not be the best way to serve consumers, particularly for services that are offered solely online. CDIA member entities are concerned that they would need to significantly increase their staff to comply with this requirement, anticipating that many of the calls received would be related to FCRA disputes not covered by the Proposed Regulations. CDIA believes covered persons should have the flexibility to implement processes that would serve their consumers in the most efficient and effective way.

CDIA recognizes the change from a 24-hour response time to a two (2) business day response time. However, considering the possible influx of complaints, as defined under the Proposed Regulations, covered entities would still have to significantly staff up to be prepared to respond within two business days. This is of particular concern to CDIA members, which may have millions of consumers of covered financial products or services separate from their CRA functions. A requirement to process even voicemails within two business days would demand significant resources to process and refer out FCRA disputes (not covered by this complaint process) within two days to be sure that for covered complaints, voicemails are returned within two business days. Further, entities may not be even able to determine whether a voicemail is for a covered complaint versus an exempt FCRA dispute, and so entities would have to return all calls within two business days. CDIA believes that federal law sets out reasonable timeframes in which covered entities should be permitted to return voicemails. For example, the CFPB allows entities 15 days⁹ within which to respond to a consumer complaint and the FCRA allows CRAs 30 days to reinvestigate an FCRA Dispute.¹⁰ Alternatively, given the large volume of consumer interactions and uneven compliance costs for non-FCRA covered services, the Department could provide an exemption from the live operator requirement for affiliates of consumer reporting agencies. The Department could also provide greater flexibility in how entities receive and respond to complaint submissions, such as permitting electronic complaint submissions and responses.

Finally, this proposed requirement appears to go beyond the scope of the Department’s authority under the Financial Code.¹¹ The Financial Code requires that the Department “establish reasonable procedures to provide a timely response to consumers, *in writing where appropriate* to complaints against or inquiries concerning, a covered person.”¹² The Financial Code indicates that the Department rules should address when a writing is appropriate; it does not, however, indicate that the

⁹ CFPB, “Learn how the complaint process works,” *available at* https://www.consumerfinance.gov/complaint/process/?_gl=1*7xo86h*_ga*Mjc5MjQ4MjU3LjE2MzE4ODU5MTQ.*_ga_DBYJL3oCHS*MTY1NTczMjMzNi44OC4xLjE2NTU3MzloMDMuMA.

¹⁰ 15 U.S.C. § 1681i(a)(1).

¹¹ Fin. Code, § 90008(a) (emphasis added).

¹² Proposed Regulations at 3, see proposed section 1072(a)(1).

Department may issue rules prescribing that covered persons must accept complaints or inquiries via telephone. Thus, CDIA urges the Department to remove this requirement.

3. Estimated costs of compliance

The Notice of Proposed Rulemaking estimated that initial compliance costs could total \$2,500, with annual costs thereafter of \$4,000. The Notice of Modification reports that previous comments indicated that compliance costs could be higher than these numbers, and that modifications proposed are intended to reduce these costs. While CDIA agrees and appreciates the Department's responsiveness to this issue, even with these modifications, the compliance costs estimates remain vastly unrealistic. For CDIA members, the live operator requirement is of particular concern. Some CDIA members have millions of customers of services subject to these proposed rules, and staffing and training live operator functions for complaints would cost significantly higher than the \$4,000 ongoing annual estimate. While limiting the live representative requirement to regular business hours and permitting up to two business days to voicemails would lower the number of representatives needed to staff the lines, the number of customers who could potentially make a call to the line, for which at minimum a live response would be required within two business days, would require that covered entities overstaff in preparation. For CDIA members, CRA business operations must process very high numbers of disputes subject to the FCRA. Even though such FCRA disputes would not be *complaints* subject to these proposed requirements, CDIA members would effectively be required to receive and talk through all calls to the line, even for those where it is determined that the complaint is actually an FCRA dispute not subject to these requirements.

4. Effective date for the regulations

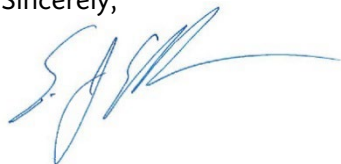
The Proposed Regulations do not provide for an extended effective or enforcement date. Considering the significant work that will be required, like involving staffing and training a live telephone line for complaints, covered entities will need at least one year to prepare and have all practices in place to comply with these new requirements. CDIA strongly urges the Department to consider an extended period.

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CDIA appreciates the opportunity to comment and provide the perspective of the consumer reporting industry on this Notice of Modification and how we can best support the financial services industry.

Please contact us if you have any questions or we can provide any additional information.

Sincerely,



Eric J. Ellman
Senior Vice President, Public Policy & Legal Affairs