April 7, 2023

Re: PRO 3/21

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

Submitted via email to: regulations@dfpi.ca.gov
With CC to: David.Bae@dfpi.ca.gov

To Whom it May Concern:

The Consumer Relations Consortium (CRC) is an organization comprised of more than 60 national companies representing creditors, data/technology providers and compliance-oriented debt collectors that are larger market participants. Established in 2013, CRC is dedicated to a consumer-centric shift in the debt collection paradigm. It engages with all stakeholders—including consumer advocates, federal and state regulators, academic and industry thought leaders, creditors and debt collectors—and challenges them to move beyond talking points. The CRC's focus is on fashioning real world solutions that seek to improve the consumer's experience during debt collection. CRC's collaborative and candid approach is unique in the market.

CRC members exert substantial positive impact in the consumer debt space, servicing the largest U.S. financial institutions and consumer lenders, major healthcare organizations, telecom providers, government entities, hospitality, utilities and other creditors. CRC members engage in millions of compliant and consumer-centric interactions every month at all stages of the revenue cycle. Our members subscribe to the following core principle:

"Collect the Right Debt, from the Right Person, in the Right Way."

We appreciate the opportunity to respond to the Notice of Proposed Rulemaking regarding the implementation and interpretation of Financial Code Section 90008. The CRC supports the regulations issued by the DFPI. However, as explained in the enclosed comment, we believe that (1) further defining and limiting the definition of who is "ultimately accountable" under section 1072(f); and (2) providing delivery of the annual notice via electronic means (i.e., website) under 1072(b)(1), will create greater clarity and better serve the consumers of California.

Sincerely,

Missy Meggison

Missy Meggison
Co-Director, Consumer Relations Consortium

COMMENT TO NOTICE OF PROPOSED RULEMAKING
Re: Sections 1072(f) and 1072(b)(1)

The Consumer Relations Consortium (CRC) is submitting its comments to the additions to the Notice of Proposed Rule Making (NPRM), released by the California Department of Financial Protection and Innovation (DFPI) on December 22, 2022.

A. Section 1072(f) "Ultimately Accountable"

Section 1072(f) states:

> The covered person shall designate an officer to monitor the complaint process who shall be **ultimately accountable** for the effective operation and governance of the complaint process. The officer and any of the officer's designees shall have the authority to change, amend, or rescind the acts, omissions, decisions, conditions, or policies of the covered person or service provider related to the financial product or service that is the subject of a complaint and to forgive or extinguish any debt, charge, or obligation of a consumer.

The words "ultimately accountable" expose the proposed rule to a serious misinterpretation which CRC believes is unintended and inconsistent with the purpose of the rule. Left uncorrected, the proposed language may be interpreted to assign *personal liability* to a designated officer overseeing the complaint process. This result would be most unusual and contrary to the overall application of the proposed rule which places compliance responsibilities on covered persons and not individual employees.

The CRC has reviewed various regulations imposed upon other industries (like energy, insurance, transportation, medical, pharmaceutical and food) and has found no other instances where an individual officer could be held personally liable for overseeing and implementing an organization's complaint policies and procedures. The DFPI has not expressed any intent or offered any basis to conclude that financial services employees should be treated differently, thus warranting the assignment of personal liability on the designated responsible employee.

To be clear, despite its label, an "officer" defined by Section 1071(g) need not be the legal corporate officer of the covered person, but instead serves merely as the "individual designated by the covered person with primary authority to monitor the complaint process and resolved complaints." Additionally, identifying a specific individual "ultimately accountable" for the complaint process may subject such a person to targeted harassment and unnecessary ire if the language can be fairly interpreted to impose personal liability on the individual. If the rule is designed to impose personal liability on the designated individual, then companies will be forced to over-compensate and protect those individuals subject to such an "ultimately accountable" role of the complaint process has set out in the proposed rule. While larger companies may have the resources to do so, forcing smaller companies to take on this risk will result in irreparable harm and restriction in the marketplace.

A better way to achieve the goal of this proposal while avoiding the unintended consequences of misinterpretation is to incorporate language into the definition of "officer" and amend Section 1072(f) as follows:

Section 1071(g):

> "Officer" means an individual designated by the covered person with primary authority and responsibility for the effective operation and governance of the complaint process,

including the authority and responsibility to monitor the complaint process and resolved complaints.

Section 1072(f):

The covered person shall designate an officer. The officer and any of the officer's designees shall have the authority to change, amend, or rescind the acts, omissions, decisions, conditions, or policies of the covered person or service provider related to the financial product or service that is the subject of a complaint and to forgive or extinguish any debt, charge, or obligation of a consumer.

CRC's proposed language places responsibility on the officer as the ultimate authority governing the complaint process while avoiding the potential for a dangerous misinterpretation of the rule exposing employees to personal liability.

B. Section 1072(b)(1) Annual Notice

Section 1072(b)(1) states:

The covered person shall make the following disclosures to consumers of its financial products and services who reside in California:

(1) In an annual notice issued to consumers at least once each calendar year and in the initial written communication to each consumer related to a particular financial product or service used by the consumer, the covered person shall disclose the procedures for filing a complaint. <u>**These disclosures may be provided electronically if the consumer has agreed to receive electronic correspondence from the covered person**</u> and shall provide the following information . . .

The proposed rule only permits delivery of the annual notice electronically if the consumer has agreed to such delivery with the covered entity. Practically speaking, this will unnecessarily limit electronic delivery dramatically, forcing covered entities to deliver the annual notice via traditional USPS mail. Traditional mail is inefficient, expensive, and requires significant resources. These financial and resource constraints will impact all covered entities but will impact small businesses most significantly. In addition, consumers are accustomed to electronic communications including, email, text, and websites. Conversely, consumers rarely read traditional mailing and are therefore less likely to receive the information provided by traditional mail only. To the extent consumers do not wish to receive the communications electronically, they may request delivery by traditional mail. But by making the presumption of delivery by traditional mail, the DFPI fails to acknowledge that consumers generally prefer to communicate electronically. While the proposed rule provides for delivery via email if the consumer "agrees," obtaining such an agreement will require covered entities to unnecessarily contact consumers via email and telephone just to secure email consent.

CRC supports a rule requiring covered persons to disclose to consumers their procedures for filing a complaint. Similar regulations in the financial services industry set out to achieve the same goal in ways that are less burdensome and less restrictive on consumers and industry alike. For example, Regulation F requires debt collectors to provide disclosures to consumers "in writing or electronically . . . in a manner that is reasonably expected to provide actual notice, and in a form that the consumer may keep and access later." 12 CFR 1006(42(a)(1). This rule allows a debt collector to use any written or electronic method of communicating important disclosures to consumers so long as that method is reasonably expected to provide actual notice. Advancements in technology now allow senders of electronic communications to know with a high degree of certainty that their electronic correspondence has been received. For these reasons, CRC proposes the following language which accommodates a California consumer's need to receiving communications in a manner likely to provide actual notice while at the same time protecting covered persons against the overbearing cost of complying with a legal presumption requiring USPS mail:

> Section 1072(b)(1) states:
>
> The covered person shall make the following disclosures to consumers of its financial products and services who reside in California:
>
> (1) In an annual notice issued to consumers at least once each calendar year and in the initial written communication to each consumer related to a particular financial product or service used by the consumer, the covered person shall disclose the procedures for filing a complaint. **These disclosures may be in writing or electronic in a manner that is reasonably expected to provide actual notice, and in a form that the consumer may keep and access later,** and shall provide the following information . . .

By updating the language in the NPRM as outlined above, the DFPI can better serve consumers and achieve its goals without creating unintended consequences.