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The Honorable Phil Ting
Chair, Assembly Budget Committee
State Capitol, Room 6026
Sacramento, CA 95814

The Honorable Monique Limon
Chair, Assembly Banking Committee
State Capitol, Room 6031
Sacramento, CA 95814

Dear Chair Ting and Chair Limon:

Re: Trailer bill to create the Department of Financial Protection and Innovation

I write on behalf of the Consumer Data Industry Association ("CDIA") to express concerns with the trailer bill to create the Department of Financial Protection and Innovation ("DFPI"). Our concerns are both substantive and procedural. To help clear up some substantive concerns, and to make the bill work better for consumers, the DFPI, and businesses, we propose some modest proposed amendments. On the matter of process, the bill is a substantial policy change that touches nearly all California consumers and thousands of businesses. The breadth of the changes to state law suggests that the bill needs hearings before policy committees.

The Consumer Data Industry Association is the voice of the consumer reporting industry, representing consumer reporting agencies, including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals and to help businesses, governments, and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity all over the world, helping ensure fair and safe transactions for consumers, facilitating competition, and expanding consumers' access to financial and other products suited to their unique needs.

Substantive concerns

CDIA is chiefly concerned that the bill's coverage of consumer reporting activities is inconsistent with federal law, the Fair Credit Reporting Act, both in scope and in substance. With regard to scope, CDIA is concerned that the bill would attempt to regulate—as a consumer financial product or service—reports of consumer account information which the FCRA and California law exclude from the definition of "consumer report." CDIA makes suggestions that would address two scope concerns. First, proposed section 90005(k)(9)(A)

provides for exceptions related to consumer reports, but as drafted, it would designate as a consumer financial product or service reports of a company's own transaction and experience information as well as other consumer information shared between affiliates. We suggest replacing "all" with "any" to make the exceptions consistent with the FCRA and to help the bill avoid FCRA preemption concerns.

Second, considering proposed section 90005(k)(9)(A) captures more than consumer reports, CDIA's suggestions an exclusion for the offering or provision of credit monitoring services, informational credit score or credit report products to consumers, or identity theft protection products or services to consumers. The FCRA and California law regulate as consumer reports information when provided to third parties, like creditors, but not when provided directly to consumers. CDIA's suggested exclusion would bring the bill in line with the FCRA and existing California law and avoid preemption concerns.

In addition to these scope concerns, CDIA is concerned with substantial requirements that are inconsistent with the FCRA. First, CDIA is concerned with proposed section 90008(a)'s requirement to provide a timely response to consumers on complaints and inquiries. The FCRA already provides consumers with dispute rights and imposes specific procedures in relation to those rights, including some which preempt any state requirement, so CDIA here suggests language to exclude consumer reporting agencies from this requirement.

Second, CDIA is concerned with proposed section 90008(c)(1)'s request for information requirement, as the FCRA already provides consumers with a disclosure right. The FCRA sets out specific requirements related to this disclosure and specifically exempts certain information from disclosure. Because of this conflict, CDIA suggests language to exclude information subject to the FCRA from this disclosure requirement.

Finally, CDIA is concerned that the bill would authorize the DFPI to require CRAs to register alongside consumer financial business that have direct relationships with consumers. Considering the unique relationship CRAs have with consumers and the fact that consumers have private rights of action against CRAs under the FCRA, CDIA here suggests a balanced state regulatory approach that would not subject CRAs to registration with the State.

Procedural concerns

The trailer bill proposes substantial policy changes that would touch nearly all California consumers and thousands of businesses. For example, proposed section 90003(a)

would impose a new UDAAP prohibition on any covered person or service provider with regard to any consumer financial product or service. Additionally, proposed section 90003(b) would extend liability for violating consumer financial laws to any entity providing substantial assistance and proposed section 90004(a) would extend new termination protections to California employees. Finally, proposed sections 90006(b), 90010(b), and 90015—among others—would grant new authorities to the proposed DFPI that the DBO does not currently have in relation to consumer financial laws.

The breadth of the changes to state law suggest that the bill needs hearings before policy committees. We hope that you and your colleagues will agree to give the complicated, proposed changes to law the full and complete policy airings that this proposal deserves.

Conclusion

We hope that our comments help your committees as the legislative process proceeds at budget hearings, informational hearings, and policy committee hearings. We stand ready to answer any questions or provide any additional information that you or your staffs may require.

Sincerely,



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

cc: Jay Obernolte, Vice Chair, Assembly Budget Committee
Phil Chen, Vice Chair, Assembly Banking Committee
Members, Assembly Budget Committee
Members, Assembly Banking Committee

CDIA Proposed Amendments to
Department of Business Oversight
California Consumer Financial Protection Law

Drafting Note: The changes proposed correspond to the earliest version of the bill, but the changes proposed have not yet been incorporated into the bill

- 90005(k)(9)(A): replace “all” with “any”.
- 90005(k)(13)(A): Delete “either of”.
- 90005(k)(13)(B): exempt the offering or provision of credit monitoring services, informational credit score or credit report products to consumers, or identity theft protection products or services to consumers.
- 90008(c): new subdivision (c) to exclude consumer reporting agencies from the scope of the Department’s authorization to establish reasonable procedures to provide a timely response to consumers to complaints against or inquiries concerning a covered person.
- 90008(c)(2): replace “may” with “shall”.
- 90008(c)(2)(E): new subparagraph (E) to exclude information subject to the FCRA from paragraph (c)(1) requirement to provide consumer with information in the covered person’s control or possession.
- 90009(a)(2)(D): new subparagraph (D) to exclude from registration functions for covered entities to the extent it offers or provides financial products or services under 90005(k)(9).

2020-21 Trailer Bill Language
Department of Business Oversight
California Consumer Financial Protection Law

An act to add Division 24 (commencing with Section 90000) to, amend Sections 300, 320, 321, and 351 of, and to repeal Section 371 of, the Financial Code, and to amend Sections 11041 and 12895 of the Government Code, relating to financial institutions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SEC. 1. Division 24 (commencing with Section 90000) is added to the Financial Code, to read:

DIVISION 24. CALIFORNIA CONSUMER FINANCIAL PROTECTION LAW

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Chapter 5. Definitions

90005. The definitions in this section apply throughout this division, except as otherwise provided in this division or where the context clearly indicates otherwise:

(a) "Affiliate" means any person that controls, is controlled by, or is under common control with another person.

(b) "Department" means the Department of Financial Protection and Innovation.

(c) "Consumer" means an individual or an agent, trustee, or representative acting on behalf of an individual or the estate, trust, or joint trust of an individual, however denominated.

(d) "Consumer financial law" means a federal or California law that directly and specifically regulates the manner, content, or terms and conditions of any financial transaction, or any account, product, or service related thereto, with respect to a consumer.

(e) "Consumer financial product or service" means any financial product or service that is described in one or more categories under any of the following:

(1) Subdivision (k) that is delivered, offered, or provided for use by consumers primarily for personal, family, or household purposes.

(2) In paragraphs (1), (3), (9), or (10) of subdivision (k) that is delivered, offered, or provided in connection with a consumer financial product or service as defined in paragraph (k).

(3) Paragraph (11) of subdivision (k).

(f) "Covered person" means any of the following:

(1) Any person that engages in offering or providing a consumer financial product or service.

(2) Any affiliate of a person described in this subdivision if the affiliate acts as a service provider to the person.

(3) Any service provider to the extent that the person engages in the offering or provision of its own consumer financial product or service.

(g) "Credit" means the right granted by a person to another person to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for those purchases.

(h) "Debt" means any obligation of a person to pay another person money regardless of whether the obligation is absolute or contingent, has been reduced to judgment, is fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured and includes any obligation that gives rise to right of an equitable remedy for breach of performance if the breach gives rise to a right to payment.

(i) "Deposit-taking activity" means any of the following:

(1) The acceptance of deposits, maintenance of deposit accounts, or the provision of services related to the acceptance of deposits or the maintenance of deposit accounts.

(2) The acceptance of funds, the provision of other services related to the acceptance of funds, or the maintenance of member share accounts by a credit union.

(3) The receipt of funds or the equivalent thereof, as the department may determine by rule or order, received or held by a

covered person or an agent for a covered person for the purpose of facilitating a payment or transferring funds or value of funds between a consumer and a third party.

(j) "Commissioner" means the Commissioner of Financial Protection and Innovation.

(k) "Financial product or service" means:

(1) Extending credit and servicing extensions of credit, including acquiring, purchasing, selling, brokering extensions of credit, other than solely extending commercial credit to a person who originates consumer credit transactions.

(2) Extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, if all of the following:

(A) The lease is on a nonoperating basis.

(B) The initial term of the lease is at least 90 days.

(C) In the case of a lease involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the department.

(3) Providing real estate settlement services, except those services excluded under paragraph (13).

(4) Engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer.

(5) Selling, providing, or issuing stored value or payment instruments, except that, in the case of a sale of, or transaction to reload, stored value, only if the seller exercises substantial control over the terms or conditions of the stored value provided to the consumer where, for purposes of this paragraph, both:

(A) A seller shall not be found to exercise substantial control over the terms or conditions of the stored value if the seller is not a party to the contract with the consumer for the stored value product, and another person is principally responsible for establishing the terms or conditions of the stored value.

(B) Advertising the nonfinancial goods or services of the seller on the stored value card or device is not in itself an exercise of substantial control over the terms or conditions.

(6) Providing check cashing, check collection, or check guaranty services.

(7) Providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payment system or networks used for processing payment data, including payments made through an online banking system or mobile telecommunications network, except that a person shall not be deemed to be a covered person with respect to financial data processing solely because the person either:

(A) Is a merchant, retailer, or seller of any nonfinancial good or service who engages in financial data processing by transmitting or storing payment data about a consumer exclusively for purpose of initiating payment instructions by the consumer to pay that person for the purchase of, or to complete a commercial transaction for, the

nonfinancial good or service sold directly by that person to the consumer.

(B) Provides access to a host server to a person for purposes of enabling that person to establish and maintain a website.

(8) Providing financial advisory services other than services relating to securities provided by a person regulated by the Securities Exchange Commission or a person regulated by a state securities commission, but only to the extent that such person acts in a regulated capacity, to consumers on individual financial matters or relating to proprietary financial products or services (other than by publishing any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, including publishing market data, news, or data analytics or investment information or recommendations that are not tailored to the individual needs of a particular consumer) including both of the following:

(A) Providing credit counseling to any consumer.

(B) Providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure.

(9) Collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, except to the extent that:

(A) A person does **any** of the following:

(i) Collects, analyzes, or maintains information that relates solely to the transactions between a consumer and that person.

(ii) Provides information to an affiliate of the person, as described in subdivision (a).

(iii) Provides information that is used or expected to be used solely in any decision regarding the offering or provision of a product or service that is not a consumer financial product or service.

(B) The information described in clause (i) of subparagraph (A) is not used by the person or affiliate in connection with any decision regarding the offering or provision of a consumer financial product or service to the consumer, other than credit described in subparagraph (A) of paragraph (1) of subdivision (e) of Section 90006.

(10) Collecting debt related to any consumer financial product or service.

(11) Directly or indirectly brokering the offer or sale of a franchise in this state on behalf of another.

(12) Offering another financial product or service as may be defined by the department, by regulation, for purposes of this division, if the department finds that the financial product or service is either:

(A) Entered into or conducted as a subterfuge or with a purpose to evade any consumer financial law.

(B) Permissible for a bank or for a financial holding company to offer or to provide under any provision of law or regulation

applicable to a bank or a financial holding company, and has, or likely will have, a material impact on consumers, excluding, however, solely from the department's authority to define additional financial products and services under this subparagraph and not the exercise of any other authority it may have, the following activities provided to a covered person:

(i) Providing information products or services to a covered person for identity authentication.

(ii) Providing information products or services for fraud or identify theft detection, prevention, or investigation.

(iii) Providing document retrieval or delivery services.

(iv) Providing public records information retrieval.

(v) Providing information products or services for anti-money laundering activities.

(13) The term "financial product or service" does not include the following:

(A) The business of insurance, as regulated by the Department of Insurance.

(B) The offering or provision of credit monitoring services, informational credit score or credit report products to consumers, or identity theft protection products or services to consumers;

(C) The provision, by a person, of electronic data transmission, routing, intermediate or transient storage, or connections to a telecommunications system or network, not including a person that provides those electronic conduit services if, when providing those services, the person does any of the following:

(i) Selects or modifies the content of the electronic data.

(ii) Transmits, routes, stores, or provides connections for electronic data, including financial data, in a manner that the financial data is differentiated from other types of data of the same form that the person transmits, routes, or stores, or with respect to which, provides connections.

(iii) Is a payee, payor, correspondent, or similar party to a payment transaction with a consumer.

(l) "Payment instrument" means a check, draft, warrant, money order, traveler's check, electronic instrument, or other instrument, payment of funds, or monetary value, other than currency.

(m) "Person" means an individual, corporation, business trust, estate, trust, partnership, proprietorship, syndicate, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or joint stock company, or any other organization or legal or commercial entity.

(n) (1) "Service provider" means any person that provides a material service to a covered person in connection with the offering or provision by that covered person of a consumer financial product or service, including a person that either:

(A) Participates in designing, operating, or maintaining the consumer financial product or service.

(B) Processes transactions relating to the consumer financial product or service, other than unknowingly or incidentally transmitting or processing financial data in a manner that the data is undifferentiated from other types of data of the same form as the person transmits or processes.

(2) The term "service provider" does not include a person

solely by virtue of that person offering or providing to a covered person either:

(A) A support service of a type provided to businesses generally or a similar ministerial service.

(B) Time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(o) (1) “Stored value” means funds or monetary value represented in any electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically, and includes a prepaid debit card or product, or any other similar product, regardless of whether the amount of the funds or monetary value may be increased or reloaded.

(2) Notwithstanding paragraph (1), the term “stored value” does not include a special purpose card or certificate, which shall be defined for purposes of this paragraph as funds or monetary value represented in any electronic format, whether or not specially encrypted, that is all of the following:

(A) Issued by a merchant, retailer, or other seller of nonfinancial goods or services.

(B) Redeemable only for transactions with the merchant, retailer, or seller of nonfinancial goods or services or with an affiliate of such person, which affiliate itself is a merchant, retailer, or seller of nonfinancial goods or services.

(C) Issued in a specified amount that, except in the case of a card or product used solely for telephone services, may not be increased or reloaded.

(D) Purchased on a prepaid basis in exchange for payment.

(E) Honored upon presentation to the merchant, retailer, or seller of nonfinancial goods or services or an affiliate of such person, which affiliate itself is a merchant, retailer, or seller of nonfinancial goods or services, only for any nonfinancial goods or services

(p) These definitions shall be interpreted consistent with the definitions in Section 1002 of Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. § 5481). Any inconsistency or ambiguity shall be resolved in favor of greater protection to the consumer and more expansive coverage.

Reasons for the change (90005(k)(9)(A): replace “all” with “any”)

Clauses (i) and (ii) under subparagraph (A) track exceptions to the definition of “consumer report” in the Fair Credit Reporting Act (“FCRA”) 15 U.S.C. §§ 1681 *et seq.* See 15 U.S.C. § 1681a(d)(2)(A). However, as drafted, the Bill would cover the processing of consumer information unless it is limited to transaction and experience information and the covered entity actually provides it to an affiliate, which cuts a much smaller exclusion than the FCRA. Therefore, we propose changing “all” to “any” consistent with the FCRA.

First, the FCRA does not govern an entity’s own transaction and experience information, regardless of whether it is communicated to an affiliate or a nonaffiliate. Additionally, affiliates are permitted by the FCRA to share non-T&E information, as provided for by the FCRA.

In fact, the FCRA actually preempts state law requirements with respect to the exchange of information among affiliates. 15 U.S.C. § 1681t(b)(2); *Am. Bankers Ass’n v. Gould*, 412 F.3d 1081 (9th Cir. 2005). Therefore, federal law would prohibit the state regulation of affiliate sharing, and as drafted, this Bill would regulate affiliate sharing to the extent that it involved non-T&E information.

Therefore, to align the coverage with the FCRA and to avoid preemption concerns, we suggest that “all” be amended to read “any.”

Reasons for the change (90005(k)(13)(A): delete “either of”)

Subdivision (k), as currently drafted, provides for two express exceptions to the term “financial service or product.” However, we propose the addition of a third exception, which necessitates adjustment of the introductory language by removing “either of” and leaving “. . . include the following.”

This is a technical recommendation in light of the below additional exemption.

Reasons for the change (90005(k)(13)(B): exempt the offering or provision of credit monitoring services, informational credit score or credit report products to consumers, or identity theft protection products or services to consumers)

Subdivision (k) provides for express exemptions from the term “financial product or service.” Among other things, the term “financial product or service” is defined to include—at paragraph (9)—collecting, analyzing, maintaining, or providing consumer report of other account information. This definition thus provides that the consumer reporting business of a consumer reporting agency, which are defined and regulated by the federal Fair Credit Reporting Act, is a “financial product or service.”

While consumer reporting agencies typically provide information products and services to third parties, like creditors, in connection with those third parties providing products and services, like credit, to consumers, consumer reporting agencies may also provide information services directly to consumers. Among other things, consumer reporting agencies may provide credit monitoring, credit score and report products, and identity theft protection products directly to consumers. These products are directed and controlled by the consumer and are generally not covered by the FCRA as consumer reports.

Additionally, the FCRA preempts state laws regulating the subject matter of credit monitoring for active duty military consumers. See 15 U.S.C. § 1681t(b)(1)(K).

Because direct to consumer products are generally not covered by the FCRA as consumer reports, because these products may be preempted from state regulation by the FCRA, and because by their nature consumers have direct control over these products, we propose to clarify that these products are not “financial products or services” under the law.

Chapter 6. Administration

90006. (a) The department shall regulate the offering and provision of consumer financial products or services under California consumer financial laws and shall exercise non-exclusive oversight and enforcement authority under

California consumer financial laws. To the extent permissible under the federal consumer financial laws, the department shall exercise non-exclusive oversight and enforcement under the federal consumer financial laws.

(b) In addition to existing functions, powers, and duties, the department shall have all of the following functions, powers, and duties in carrying out its responsibilities under this law:

(1) To bring administrative and civil actions, and to prosecute those civil actions before state and federal courts.

(2) To hold hearings and issue publications, results of inquiries and research, and reports that may aid in effectuating the purposes of this law.

(3) To perform such other functions as may be authorized or required by law.

(c) Sections 11040 and 11042 of the Government Code do not apply to this law.

(d) (1) The commissioner may investigate, research, analyze, and report on markets for consumer financial products or services.

(2) The commissioner may develop and implement outreach and education programs to underserved consumers and communities.

(3) The commissioner may develop and implement initiatives to promote innovation, competition, and consumer access within financial services.

(e) The following are excluded from the department's authority:

(1) Merchants, retailers, and other sellers of nonfinancial goods and services, subject to the following conditions:

(A) The department may not exercise authority under this division as to

(i) The bona fide extension of credit by a merchant, retailer, or seller of nonfinancial goods and services to a consumer for the acquisition of a nonfinancial good or service, provided that all of the following conditions are met:

(I) The credit extended does not significantly exceed the fair market value of the nonfinancial good or service provided.

(II) The merchant, retailer, or seller does not sell or otherwise assign the debt, except as to the sale of delinquent debt for the purposes of collection.

(III) The merchant, retailer, or seller of nonfinancial goods and services does not regularly extend credit, as defined under the federal Truth in Lending Act (15 U.S.C. Sec. 1601 et seq.) and regulations issued thereunder.

(ii) The collection or sale of delinquent debt arising from credit described in clause (i).

(B) Nothing in subparagraph (A) shall limit the department's authority to the extent that

the department finds the sale of the nonfinancial good or service is done as a subterfuge, so as to evade or circumvent the provisions of this title; or

(2) consumer reporting agencies as defined by 15 U.S.C. Sec. 1681a(f). 90007. With respect to funds under this division:

(a) All moneys collected or received by the commissioner under this division shall be deposited with the State Treasurer to the credit of the Financial Protection Fund. All moneys in the Financial Protection Fund shall be available, upon appropriation by the

Legislature, to the commissioner for purposes of administering this division.

(b) The department may set and collect an annual registration fee for each entity required to register under subdivision (a) of Section 90009, which may be scaled based on the size or market participation of the entity. The annual registration fee shall be limited to the reasonable regulatory costs under this division incident to issuing registrations and performing investigations, inspections, examinations, audits, and supervisory activities; and the administrative enforcement and adjudication of this division with respect to registrants. The regulatory costs for the administrative enforcement of this division are for the purposes of protecting consumers against unfair, deceptive, or abusive acts or practices in connection with any transaction involving the provision of financial products and services in this state; protecting registrants against unfair competition; improving accountability and transparency; and ensuring equitable enforcement of consumer financial laws.

(1) The cost of every inspection and examination of a covered person conducted under the authority of this law shall be paid to the department by the covered person examined and the department may maintain an action for recovery of those costs in any court of competent jurisdiction. In determining the cost of any inspection or examination, the department may use the estimated average hourly cost, including

overhead, for all persons performing inspections or examinations of licensees or other persons subject to this division for the fiscal year.

(2) Nothing in this subdivision shall alter or supersede the requirements for the cost of an examination conducted under the authority of any other law administered by the commissioner.

(c) (1) The commissioner shall use funds obtained by the commissioner through the enforcement of any of the laws administered by the commissioner, including moneys received through fines, penalties, settlements, judgements, or otherwise, for the administration of this division, whether those funds were received before or after the enactment of this division. This provision shall not be applicable to fines, penalties, settlements, or judgments received by any other agency unless the settlement, judgement or an agreement expressly allocates funds for the administration of this division.

(2) In addition to funds obtained through the enforcement of any of the laws administered by the commissioner, the commissioner may use funds for the administration of this division that are obtained, awarded, delegated, or otherwise attributed to the department through the enforcement of any other consumer, borrower, or investor protection law, regardless of whether the action is brought directly by the commissioner or by another agency or official.

(3) Funds designated as restitution or other ancillary relief to an injured person shall not be subject to this subdivision.

(a) The fees and assessments paid pursuant to this section are nonrefundable.

90008. (a) The department shall establish reasonable procedures to provide a timely response to consumers, in writing where appropriate, to complaints against, or inquiries concerning, a

covered person.

(b) A covered person shall provide a timely response, in writing where appropriate, to the department concerning a consumer complaint or inquiry, including all of the following:

(1) Steps that have been taken by the covered person to respond to the complaint or inquiry of the consumer.

(2) Responses received by the covered person from the consumer.

(3) Follow-up actions or planned follow-up actions by the covered person to respond to the complaint or inquiry of the consumer.

(c) Sections (a) and (b) shall not apply to a covered person to the extent it is a consumer reporting agency, as defined by the Fair Credit Reporting Act at 15 U.S.C. § 1681a(f).

(d) With respect to the provision of information to consumers by covered persons, the following shall apply:

(1) A covered person shall, in a timely manner, comply with a consumer request for information in the control or possession of that covered person concerning the consumer financial product or service that the consumer obtained from that covered person, including supporting written documentation, concerning the account of the consumer.

(2) Notwithstanding paragraph (1), a covered person shall not be required by this section to make available to the consumer any of the following information:

(A) Confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors.

(B) Information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting or making any report regarding other unlawful or potentially unlawful conduct.

(C) Information required to be kept confidential by any other provision of law.

(D) Nonpublic or confidential information, including confidential supervisory information.

(E) Information collected, received, maintained, disclosed, sold, or processed pursuant to the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.*

90009. (a) (1) The department may prescribe rules regarding registration requirements applicable to a covered person, including requiring a filing be made under oath, and requiring the payment of registration fees. The department may require registration through the Nationwide Multistate Licensing System and Registry.

(2) Notwithstanding paragraph (a)(1), the department shall not require the registration or the payment of a fee by any of the following:

(A) A covered person who is licensed by the department under another law and who is providing a financial product or service within the scope of that license.

(B) A covered person who is licensed or registered by another agency unless the covered person is offering or providing a financial product or service that is not regulated by the agency licensing or registering the covered person.

(C) A covered person who is licensed by the department or a federal agency who engages in deposit-taking activity unless the covered person is offering or providing a financial product or service

that is not regulated by the agency licensing the covered person.

(D) A covered person to the extent that it offers or provides a financial product or service under paragraph (9) of subdivision (k) of section 90005.

(b) The following procedures apply to the oversight of persons required to register under subdivision (a):

(1) The department may prescribe rules to facilitate oversight of covered persons and assessment and detection of risks to consumers.

(2) The department may require a covered person to generate, provide, or retain records for the purposes of facilitating oversight of those persons and assessing and detecting risks to consumers.

(3) The department may prescribe rules regarding a covered person to ensure that such persons are legitimate entities and are able to perform their obligations to consumers. Such requirements may include background checks for principals, officers, directors, or key personnel and bonding or other appropriate financial requirements.

(c) The department may prescribe rules applicable to any covered person or service provider identifying as unlawful, unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Rules under this section may include requirements for the purpose of preventing those acts or practices.

(1) The department shall interpret "unfair" and "deceptive" consistent with Section 17200 of the Business and Professions Code and the case law thereunder.

(2) The department shall have no authority under this law to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice either:

(A) Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service.

(B) Takes unreasonable advantage regarding any of the following:

(i) A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service.

(ii) The inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service.

(iii) The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

(3) The term "abusive" shall be interpreted consistent with Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. § 5481). Any inconsistency shall be resolved in favor of greater protections to the consumer and more expansive coverage

(d) The department may prescribe rules applicable to any covered person to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

(e) The department, by regulation, may define unfair, deceptive, and abusive acts and practices in connection with the offering or provision of financial products and services by covered persons to small

businesses, nonprofits, and family farms. The rulemaking may also include data collection and reporting on lending by covered persons to those entities.

(f)(1) In conducting any monitoring, regulatory or assessment activity, the department may gather information from time to time regarding the organization, business conduct, markets, and activities of any covered persons and service providers.

(2) The department may require any covered persons and service providers participating in consumer financial services markets to file with the department, under oath or otherwise, in the form and within a reasonable period of time as the department may prescribe by rule or order, annual or special reports, or answers in writing to specific questions, as necessary for the department to fulfill its monitoring, assessment, and reporting responsibilities.

(3) To clarify the applicability of state credit cost limitations, including rate and fee caps, to the offering and provision of consumer financial products and services by covered persons, the department may interpret and implement, including to prevent evasion thereof, all California credit cost provisions as to their applicability to consumer financial products and services. Nothing in this paragraph shall be construed to give the department authority to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, except as otherwise provided for by statute.

(g) If the department and another agency have joint authority, the department shall consult with that agency before promulgating regulations under such laws. The department shall conduct this consultation a minimum of 30 days before the issuance of a notice of proposed rulemaking and a minimum of 30 days before the issuance of any final rule. The commissioner may not amend or rescind any regulation promulgated by another department or agency.

Reasons for the change (90008(a)(2): new subdivision (c) to exclude consumer reporting agencies from the scope of the Department’s authorization to establish reasonable procedures to provide a timely response to consumers to complaints against or inquiries concerning a covered person)

Subdivision (a) would, as drafted, authorize the Department to establish procedures to provide a timely response to consumers on complaints and inquiries. Subdivision (b) would, as drafted, require a covered person, including a consumer reporting agency, to provide a timely response to the department concerning a consumer complaint or inquiry.

Under the FCRA, consumers have the right to dispute the accuracy or completeness of information with CRAs. See 15 U.S.C. § 1681i. Therefore, consumers already have dispute rights with CRAs, and the FCRA preempts any state law dispute response timing requirements. The Department’s procedures could also conflict with the FCRA, as FCRA section 1681i lays out specific requirements as to how a CRA must reinvestigate a dispute and how it must respond to consumers.

Therefore, considering the fact that consumers have these rights under federal law and federal law may pose preemption problems, we have suggested a narrow carveout for CRAs.

Reasons for the change (90008(c)(2): replace “may” with “shall”)

Paragraph (2) of subdivision (c) of section 90008 would exclude certain information from the scope of what a covered person must make available to a consumer, reading that a “covered person may not be required. . .” (emphasis added). Stating that a covered person “may not” be required to provide certain information is not the same thing as providing that a covered person is not required to provide such information. Accordingly, we offer a technical amendment to clearly exclude the information listed in paragraph (2) from the disclosure requirement.

Reasons for the change (90008(c)(2)(E): new subparagraph (E) to exclude information subject to the FCRA from paragraph (c)(1) requirement to provide consumer with information in the covered person’s control or possession)

Paragraph (1) of subdivision (c) of section 90008 would require a covered person to, in a timely manner, comply with a consumer request for information in the control or possession of that covered person concerning the consumer financial product or service that the consumer obtained from that covered person, including supporting written documentation, concerning the account of the consumer.

With regard to information held by a consumer reporting agency, including consumer report information, federal law already provides for a disclosure right. Under section 609 of the FCRA, consumer reporting agencies must, upon a consumer’s request, disclose all information in a consumer file at the time of the request, the sources of that information, information on end users acquiring consumer reports, and other information. 15 U.S.C. § 1681g(a). The FCRA provides specific expectations around how this disclosure must be made, and so a disclosure right under the Bill would be duplicative. The FCRA also excludes certain information from disclosure, and the subdivision (c) requirement could conflict with federal law.

Therefore, since federal law already provides this right to consumers and state duplication of this right could cause conflict with federal law and confusion to consumers, we suggest that consumer report information be excluded from this requirement. Such an exclusion would also be consistent with the California Consumer Privacy Act (“CCPA”).

Reasons for the change (90009(a)(2)(D): new subparagraph (D) to exclude from registration functions for covered entities to the extent it offers or provides financial products or services under 90005(k)(9)

Consumer reporting agencies’ core business is providing information to creditors, who in turn provide services to consumers. Thus, in contrast to creditors, CRAs are typically one step removed from consumers, but like creditors, CRAs are already highly regulated by both federal and state law. Prime among those laws is the *federal* FCRA, which is enforced by the Consumer Financial Protection Bureau (“CFPB”). Consumers also have private rights of action against CRAs for violation of the FCRA, as reflected in 15 U.S.C. §§ 1681n and 1681o.

In light of the fact that CRAs are generally one step removed from consumers and the fact that federal law provides for regulation by the CFPB and private rights of action with consumers, we believe that a tailored state supervisory approach is warranted, and we have proposed this amendment to that end. Specifically, we propose to exclude from the registration requirement covered persons to the extent that they offers a financial product or service under paragraph (9) of subdivision (k) of section 90005. Such a narrow exclusion would provide for a balanced state regulatory approach.