



Third Party Payment Processors Association
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September 17, 2021

Subject: TPPPA Response to CA DFPI RFCs PRO 02-21 and PRO 03-21

Submitted via email

Dear Ms. Monahan and Mr. Bae:

The Third Party Payment Processors Association (TPPPA) appreciates the mission of the California Department of Financial Protection and Innovation (DFPI) to protect California consumers and small businesses, and to foster responsible innovation. We thank the DFPI for providing the opportunity to share our feedback and perspective related to these requests for comment, as well as the opportunity to highlight potential unintended consequences of these rules.

The TPPPA is a national not-for-profit association representing third-party payment processors (TPPPs) and banks that sponsor TPPPs in various payments networks. The TPPPA was formed in the summer of 2013 to advocate on behalf of our members and the payments industry, and to create, foster and promote industry best practices in compliance in the third-party payment processing space. The TPPPA's best practices are known as the TPPPA Compliance Management System (TPPPA CMS). The TPPPA CMS considers TPPPs of all types (Card, ACH, Check, etc.) to be third-party service providers of the banks that sponsor them into the payment networks. This concept is consistent with the Third-Party Risk Management guidance of the Federal Banking Regulators and is articulated in some of the payment system rules. As such, the TPPPA CMS is built upon a foundation of bank guidance including OCC Bulletin 2013-29, "Third-Party Relationships: Risk Management Guidance," OCC Bulletin 2017-43 New, Modified, or Expanded Bank Products and Services: Risk Management Principles as well as bank and corporate guidance by the Consumer Financial Protection Bureau's (CFPB) and the Department of Justice's (DOJ) Compliance Management System Guidance.

The TPPPA's responses to these requests for comment derive from the opportunities and obstacles inherent in the rapidly evolving environment in which our members operate. Unquestionably, there has been a significant shift over the past 10-15 years from person-to-person payments to electronic/digital payments conducted over the internet. The COVID-19 Pandemic dramatically accelerated this evolution. The pace of this shift to digital transactions over the internet continues to escalate and is not likely to recede. Consumers and businesses have embraced, and have come to expect the convenience, speed and greater access to products and services enabled by the internet. The purchase of goods and services in digital form over the internet is essential to facilitate interstate commerce in a digital age.

Efforts at a federal level to accommodate the new reality of digital payments, while fostering innovation, protecting consumers, and facilitating interstate commerce include three key laws:

- Electronic Funds Transfer Act (EFTA) enacted in 1978 to accommodate ATM and debit card transactions and the then newly emerging ACH Network;
- Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 enacted to facilitate interstate commerce (aligning with the emergence of the World Wide Web in 1993); and
- Check Clearing for the 21st Century Act (Check 21) to facilitate the digital clearing of paper checks.

Unfortunately, the efficiencies and opportunities for innovation in a digital economy are eroded by the myriad state laws that, while intended to protect state residents, diminish the effects of these forward-thinking national efforts to promote internet/interstate commerce. While some efforts have been made to facilitate cooperation among the states through associations like the Conference of State Bank Supervisors (CSBS), National Association of Attorneys General (NAAG), Uniform Law Commission (ULC) and the National Conference of State Legislators (NCSL), the polarized political environment we find ourselves in has diminished the effects and the mission of these organizations, and states are more and more frequently enacting their own laws in a state vacuum, disregarding and/or diminishing the impact of interstate commerce, competition, consumer choice and innovation, to name a few. For these reasons, the TPPPA has some concerns about the impact of the proposed rules promulgated by the State of California.

Consumer Complaints (PRO 03-21):

As explained above, TPPPs are service providers to banks. They are also service providers to merchants and those persons considered to be covered by these rules. The TPPPs function is to collect and format electronic payment data required by payments systems and banks to clear and settle payment transactions. This data does not include the state of residence of the consumer or business that is making the payment. As a result, the TPPPs do not have the ability to distinguish which states' laws may be applicable to the payments processed. Additionally, TPPPs are service providers to banks and should also be exempt from this rule. For these reasons, the requirements articulated in this rule should not apply to payment processors.

The TPPPA is also concerned about the unique California requirements for Covered Persons to gather, store, track and report the very specific and comprehensive data that California is proposing to mandate related to consumer complaints. In the highly technical, data driven transactions required to support interstate commerce transactions over the internet, technology must be programmed to accommodate capture, processing, tracking, and reporting of data. These programs are highly sophisticated and require rigorous and time-consuming planning, change management, documentation, and testing, as well as highly technical staff to perform these functions. Each time changes are made to a program, the risk of impacting other programmed components exist, resulting in tremendous cost. If the requirements mandated by the State of California were not unique to a single state and applied to all transactions, this would not be problematic.

The TPPPA urges California to work collectively with the other states to adopt a single data standard for consumer complaint reporting, and standard procedures and timing for submitting the data to the states. Failure to adopt a unified standard will inevitably result in consequences unintended by the DFPI and its proposed rules, including:

- Costs of financial products and services increasing considerably, impacting California consumers.
- Covered Persons deciding to not offer products and services to California residents due to the increased cost of doing business in California, impacting California consumers' choice.
- California Covered Persons being required to comply with the unique requirements of other states, dramatically increasing the cost of doing business to California businesses.
- Responsible companies exiting the California marketplace, while those companies that disregard and ignore compliance continue to offer their bogus products freely.
- An escalation of the merger and acquisition trend that is plaguing the financial services industry due to the ever-increasing cost and complexity of compliance, resulting in more consolidation, less competition, fewer options, and higher prices to consumers.

Commercial Financing to Small Businesses, Nonprofits, and Family Farms (PRO 02-21):

The TPPPA respects the DFPI's efforts to protect Small Businesses, Nonprofits and Family Farms from unfair, deceptive, and abusive acts and practices. However, the definitions posed by the State present a few problems articulated below:

- The definitions are not consistent with the federal UDAAP standards creating a double standard (or worse if other states follow the example of California and create their own UDAAP standard).
- The ambiguous and subjective nature of some of the language is subject to interpretation and/or personal opinion such as:
 - "The act or practice offends an established public policy..." begging the questions: What public policy? What does "established" mean?
 - "The act or practice is immoral" as morality is subjective.

We would like to offer one final thought for the consideration of the DFPI in its rulemaking efforts. The DFPI has a dual mission to promote consumer protection as well as innovation. This dual mission requires a careful balance. Excessive and/or redundant rules kill innovation. We urge the DFPI to take a balanced approach to compliance and innovation.

Thank you for the opportunity to respond to these requests for comment.

Sincerely,



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