



March 8, 2020

**SENT VIA ELECTRONIC MAIL**

California Department of Financial Protection and Innovation, Legal Division  
Attn: Mark Dyer, Regulations Coordinator  
1515 K Street, Suite 200  
Sacramento, California 95814-4052  
[regulations@dbo.ca.gov](mailto:regulations@dbo.ca.gov)

**Re: Invitation for Comments on California Consumer Financial Protection Law (CCFPL) under Division 24 of the Financial Code (commencing with Section 90000)**

Dear Mr. Dyer and Mr. Alvarez:

The Innovative Lending Platform Association (“ILPA”) appreciates the opportunity to comment on the February 4, 2021 Invitation for Comments from the Department of Financial Protection and Innovation (the “DFPI” or the “Department”).

ILPA is the leading trade organization for online lending and service companies serving small businesses. Our member companies<sup>1</sup> share a commitment to the health and success of our nation’s small businesses. They are dedicated to advancing best practices and standards that promote responsible innovation and access to capital.

The Department is considering rules defining “unfair, deceptive, and abusive acts and practices in connection with the offering or provision of commercial financing... or other offering or provision of financial products and services to small business recipients, nonprofits, and family farms.” (Fin. Code § 90009, subd. (e).)

The DFPI may also, by rule, require data collection and reporting on “the provision of commercial financing or other financial products and services.” (Fin. Code § 90009, subd. (e).)

**1. Definitions**

a. Financial Code section 90005 establishes definitions that apply to the CCFPL. Are additional definitions needed? For the terms already defined, are any of the definitions unclear, and if so, why? Does any definition result in ambiguity regarding whether an individual or entity, or product or service, falls within the scope of the CCFPL?

The definition of “Consumer” in Financial Code Section 90005(c) is: “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.”

Many small businesses operate as sole proprietors without a legal entity. Such businesses could arguably fall under the above definition of consumer, as they act on their own behalf, albeit in a commercial capacity. This

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<sup>1</sup> BFS Capital, BlueVine, Fundbox, Funding Circle, Kabbage, Lendio, Mulligan Funding, OnDeck, and PayNet

miscategorization could conflict with other existing laws, regulations, or other regulatory or supervisory authorities and otherwise disincentivize commerce. California companies may refrain from entering commercial transactions with sole proprietors out of fear that those sole proprietors could claim consumer protections apply to their commercial activity.

Accordingly, we recommend the DFPI clarify that the definition of “consumer” only refers to individuals (or agents, trustees, or representatives acting on their behalf) acting on their own behalf for personal, family, or household purposes, and not in any commercial capacity.

This would also align with other California laws; the Consumers Legal Remedies Act, for example, defines “consumer” in Section 1761 as “an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.”

## ***6. Unfair, Deceptive and Abusive Acts and Practices (Commercial)***

a. Are there specific acts or practices in the commercial financing market or in the offering and the provision of financial products or services to small business recipients, nonprofits, and family farms that stakeholders believe are unfair, deceptive, or abusive? If so, please describe the act or practice (with specific examples, if possible) and explain why the act or practice is unfair, deceptive, or abusive. Should the DFPI issue a regulation to define the act or practice as unfair, deceptive, or abusive? (Fin. Code § 90009, subd. (e).)

California already has broad authority to regulate unfair and deceptive commercial acts under the Unfair Competition Law (UCL)<sup>2</sup> and applicable case law. To the extent the DFPI deems it necessary to issue regulations for unfair, deceptive, or abusive acts, the Department should only address abusive acts and practices, which do not fall under the existing UCL. The Department should not issue definitions for unfair and deceptive acts and practices under Fin. Code § 90009, subd. (e), as any such definitions risk creating consumer confusion, duplication, conflicting bodies of law, and could unnecessarily discourage commerce.

## ***7. Data Collection and Reporting for Commercial Financing***

a. Should providers of commercial financing and other financial products and services to small business recipients, nonprofits, and family farms be required to collect and report data to the DFPI? (Fin. Code § 90009, subd. (e).) If so, what data should the DFPI require to be collected and why?

We do not believe such collection is necessary, as it will already be done on a federal level under the Consumer Financial Protection Bureau’s (“CFPB” or the “Bureau”) Rule 1071.

However, to the extent the DFPI believes reporting to the Department is necessary, ILPA recommends that the DFPI models its collection requirements after Rule 1071’s final regulations.

The CFPB’s Final Report on comments the Bureau received for Rule 1071<sup>3</sup> includes commenters’ estimates that set up reporting costs could be as high as \$100,000 to \$200,000, plus on-going costs. Thus, the resources needed to comply with federal reporting requirements may already be significant. Accordingly, the DFPI should mirror any California-specific reporting requirements (e.g., what data needs to be reported, how, how often, and so on) to minimize duplicative compliance costs that may otherwise limit the ability of commercial financing companies to provide funding to California SMBs. Aligning any DFPI reporting requirements with Rule 1071 will also ensure greater compliance in practice.

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<sup>2</sup> See UCL Section 17200.

<sup>3</sup> Available at: [https://files.consumerfinance.gov/f/documents/cfpb\\_1071-sbrefa-report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_1071-sbrefa-report.pdf)

Additionally, we strongly urge the Department to study the privacy risks, costs, and best practices required for any collection and reporting program.

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We look forward to continuing to work with the DFPI and Commissioner Alvarez on this vital rulemaking process. If you have any questions, please do not hesitate to contact me at [scott@innovativelending.org](mailto:scott@innovativelending.org).

Best regards,



Scott Stewart, CEO  
Innovative Lending Platform Association  
cc: Charles Carriere, Counsel for the Commissioner at [charles.carriere@dbo.ca.gov](mailto:charles.carriere@dbo.ca.gov)