

April 26, 2021

[Via Email \(regulations@dfpi.ca.gov\)](mailto:regulations@dfpi.ca.gov)
Commissioner of Financial Protection and Innovation
300 South Spring Street, 15th Floor
Los Angeles, CA 90013
Attn.: Sandra Sandoval,
Regulations Coordinator

Re: Comments to Commercial Finance Disclosure Regulations published April 7, 2021 (“Proposed Regulations”)

Dear Ms. Sandoval,

I am respectfully submitting the following comments to the Proposed Regulations. We are a licensed California Finance Lender by your Department and make exclusively commercial loans. We also serve as a marketing and servicing representative on behalf of state chartered Banks. We would be considered a “financer/provider” under the definitions contained in the Proposed Regulations. Our comments relate to general formatting requirements and Closed End Transactions specifically as relevant to our commercial lending program. Our comments are as follows:

1. Proposed Regulation: Section 2060 (a) (3) relating to the requirements of the disclosure as to the term of the contract, deletes the following language: “(3) For the purposes of these disclosures, a provider shall assume that there are 30 days in every month and 360 days in a year. For example, a term of 400 days would be disclosed as “1-year, 1.33 months.”

Comment: Are we to assume from this that the calculation of term should be based upon a 365 day year and if so, how do you calculate the number of months for months with more or less than 30 days? Therefore, retention of the language deleted as referenced above is appropriate.

2. Proposed Regulation: Section 2060 (a) (13) states: “If a provider issues a disclosure where the amount financed includes funds used to pay down or pay off a preexisting financing agreement, and the amount due under the preexisting financing agreement changes prior to consummation of the agreement between the financer and the recipient, the provider need not provide a new disclosure to the recipient solely because the amount due under the preexisting financing agreement has changed.”

Further, Section 2061 (a) (2) (iv) states: “If any portion owed will be used to satisfy obligations under another financing, the provider shall also include the following statement: “Because this financing will be used to [‘pay down’/ ‘pay off’] another financing contract, and the amount due under that contract may change, the amount we pay you directly may change.”

Finally, new Section 3027 which adds the requirement for the additional “Funding You Will Receive” document, requires listing of deductions from the “Funding Provided” to arrive at a net “Funding You Will Receive,” presumably requiring disclosure of amounts deducted to satisfy obligations owed under another financing.

Comment: The above does not distinguish between preexisting financing provided by the provider and preexisting financing owed to unrelated parties that would need to be satisfied as a condition to funding through the amount financed. This presents practical problems and limitations in that at the introduction and negotiation stage with a prospective recipient and before formal underwriting, when a financing proposal is made and a Disclosure is required, the existence of obligations unrelated to the provider/financer (i.e. third

party obligations) will either not be known or will be based upon unverified or potentially inaccurate information from the recipient. We would propose that any reference to payments required from available funds be allowed to be deferred until a “final” disclosure is issued prior to completion of the loan, that has more accurately verified the amount of funds which will be used to satisfy existing obligations. Alternatively, this requirement should be clarified to only deduct from the Funding Provided, amounts necessary to pay off existing financing contracts owed to the provider or related parties which the provider would know and thereafter, funds necessary to payoff third party financing contracts only known.

We would further recommend, with respect to the “Funding Provided” row, that you allow for an additional option if existence of other financing to third parties is not known at the time of providing the Disclosure, that the Disclosure allow for language in column three, to the effect: “If this financing will be used to pay off another financing contract owed to a third party, the amount we pay you directly may change.”

Additionally, in the “Funding You Will Receive” document, you should allow for a deduction line item for “pay off of other financing contracts” and the ability to state if not known at the time the disclosure is given \$0 in the Amount column and in the Description the statement “Not known as this time.”

3. Proposed Regulation Section 2061 (a)(2)(C) (ii) and (iii) now states in pertinent part “if the amount financed is less than the funds available to the recipient.....”

Comment: We believe the reference to “less than” should be changed to “greater than.”

4. Proposed Regulation Section 2061 (a) (12) relates to the addition of a row for contracts that provide for multiple payment options and the statement “This financing has multiple payment options. This disclosure assumes you will make the minimum payments permitted under the contract.” The previous version allowed for a statement explaining how the provider has based the minimum payments permitted under the contract. The Proposed Regulations also require the provider to assume the recipient makes minimum required payments under the contract. See Regulation Section 2061 (a) (5) for example with respect to calculation of Total Payments.

Comment: In addition to the proposed language for the first row, the provider should be able to provide in the first row of the disclosure an additional statement explaining how the provider has based the disclosure on the minimum payments permitted under the contract. This would comply with the requirement that an explanation be not more than 60 words. See Regulation Section 2060 (a) (7).

Please feel free to contact me if you have any questions relating to these comments.

Respectfully submitted,

[REDACTED]
Robert B. Lapidus
SVP/General Counsel

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