



paypal.com

April 23, 2021

Commissioner of Financial Protection and Innovation
Attn: Sandra Sandoval, Regulations Coordinator
300 South Spring Street, 15th Floor
Los Angeles, CA 90013

Via Electronic Mail To: regulations@dfpi.ca.gov

With A Copy To: Charles Carriere, Senior Counsel ([REDACTED]@dbo.ca.gov)
Jesse Mattson, Senior Counsel ([REDACTED]@dbo.ca.gov)

RE: FILE NO. PRO 01-18
RESPONSE TO NOTICE OF MODIFICATIONS TO PROPOSED REGULATIONS UNDER DIVISION 9.5
OF THE CALIFORNIA FINANCIAL CODE (PRO 01/18)

Dear Ms. Sandoval,

PayPal, Inc. ("PayPal") is pleased to offer comments in response to the California Department of Financial Protection and Innovation's (the "Department") proposed revised regulations implementing California Financial Code Sections 22800 through 22805, which require disclosures in small business financing. PayPal appreciates the Department's thoughtful approach toward ensuring recipients receive disclosures that are clear, meaningful and accurate. As set forth below, PayPal respectfully requests the Department address the following key concerns before finalizing its regulations.

1. Effective Date of Regulations

As noted in PayPal's October 28, 2020 comment letter, the disclosures contemplated by the proposed regulations require significant programming work and technical systems changes, including user experience changes, redefining aspects of products' underwriting processes, and changes to related strategies and technical rules. PayPal prides itself on its high standards for its customer experiences and will need to devote significant time and resources to ensure compliance with the proposed regulations can be accomplished in a disciplined, controlled and appropriately tested manner, and in a way that does not degrade the quality of our customer experiences. *To accommodate the needed time for research, design, and development – as well as appropriate testing and monitoring – and to avoid the inherent risks associated with implementing a complex and new disclosure regime in a rushed manner – PayPal respectfully requests that the Department allow at least a 12-month implementation and compliance timeframe.*

2. Presentment of Required Disclosures

The revised proposed rules provide that the required disclosures must be provided "any time a specific periodic payment or irregular payment amount, rate or price, in connection with commercial financing, is

quoted in writing to a recipient, based on information from, or about, the recipient.” However, where a recipient can choose a range of terms to customize an offer for financing to meet their specific needs, or select from multiple financing options presented, the above-quoted language could be read to require that the disclosures be provided for each available option presented. This would be confusing for recipients and extremely burdensome for providers.

The current user experiences for the PayPal Working Capital, PayPal Business Loan and LoanBuilder business financing products offered through PayPal are depicted below to help illustrate this concern. Each of these products provide recipients with the flexibility to choose their specific loan offer, including the loan amount, duration and fee. As shown by the screen shots below, the application experiences are designed to allow both transparency and flexibility so recipients can easily compare and customize the available options.

PayPal Working Capital Offer Customization:

Customize your offer

Adjust the loan amount to see your options

\$3,000

You can borrow between \$500-\$15,000

REPAY WITH	ONE-TIME FEE
<input checked="" type="radio"/> 30% of sales	\$89
TOTAL YOU REPAY	\$3,089
ESTIMATED TIME TO REPAY	1-2 months*
<input type="radio"/> 25% of sales	\$105
<input type="radio"/> 20% of sales	\$130
<input type="radio"/> 15% of sales	\$172
<input type="radio"/> 10% of sales	\$262

*What is the estimated time to repay?

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PayPal Business Loan / LoanBuilder Offer Customization:

Your business is eligible for up to \$7,500!¹

Use the sliders below to build a loan with your desired amount and duration. After you click next, we'll guide you through the process to complete your loan application.

Loan Amount: \$5,000

Loan Term: 52 Weeks

Selected Loan Terms	
Loan Amount:	\$5,000
Total Loan Fee:	\$824
Total Repayment Amount:	\$5,824
Loan Term:	52 Weeks
Weekly Payment:	\$112.01

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Next

Clearly, it would be quite confusing for a recipient to receive multiple and different disclosures for each option presented in the screens above. Indeed, if a new, unique two-page disclosure is required each time the recipient adjusts the offer options, the number of disclosures presented would be overwhelming and extremely confusing, thereby defeating the underlying purposes of the proposed disclosures.

To remedy this, the Department should clarify that, where a provider allows a recipient to select from multiple offer options or customize a loan offer, a provider must only provide the disclosures for the specific offer that the recipient elects to pursue.

3. Estimated Disclosures – Historical Method

In calculating average historical sales, income or receipts using the Historical Method, the revised rules now allow a provider to exclude “any month that is *less than* the average monthly sales, income, or receipts of the months required to be considered . . . if the provider determines that *the decreased* monthly sales, income or receipts volume in that month arose from a cause, such as a natural disaster or uncommon business interruption, that is unlikely to recur during performance of the contract.” This modification allows providers much needed flexibility to more accurately calculate a recipient’s average monthly sales, income, or receipts. However, just as a provider can now exclude months with lower sales, a provider should also be able to exclude from the calculation of average monthly sales any months with exceptionally higher sales “which are the result of a cause unlikely to recur during performance of the contract.” PayPal respectfully requests that the Department amend its proposed rules accordingly.

4. “Total Payments” Disclosure

The revised proposed rules add a disclosure for “Total Payments” or “Estimated Total Payments,” which is “[t]he total payments or total estimated payments the recipient will make during the term of the contract if the recipient makes minimum required payments.” However, it is unclear if this is intended to mean the total

number of payments, *e.g.*, 12 payments, or the total dollar amount of payments, *e.g.*, "\$5,000." PayPal asks the Department to clarify that the above quoted language is referring to the total dollar amount of payments and not the total number of payments. Requiring disclosure of the total number of payments would be very confusing for a sales-based product like PayPal Working Capital, where a loan payment is taken from a percentage of each PayPal sale. To the extent the number of payments is the intended disclosure, PayPal asks the Department to reconsider including this additional disclosure for sales-based products.

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Thank you for the opportunity to participate in the discussion on this important issue. PayPal would welcome an opportunity to meet with the Department to discuss its small business financing products and initiatives and the issues set forth in this letter.

Sincerely,

/s/

Bernardo Martinez
Vice President, Global Merchant Lending