



April 26, 2021

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

Re: Comments on Proposed Rulemaking for Commercial Financing Disclosures
File No.: PRO 01-18

Dear Commissioner Alvarez:

On behalf of Reliant Services Group, LLC dba Reliant Funding (“Reliant Funding”), we would like to thank the California Department of Financial Protection and Innovation (“DFPI”) for the opportunity to submit comments on the proposed regulations for the implementation of SB 1235.

Reliant Funding is a financing company that provides capital to small businesses in various industries with a maximum funding amount of \$250,000.00. Reliant Funding provides financing to small businesses by entering into contracts to purchase their future accounts receivable in exchange for an up-front lump sum. This “sales-based financing” (also known as merchant cash advance or “MCA”) provides these small businesses, who may not qualify for traditional financing, with expedited funding and flexible payment terms. While Reliant Funding supports the need for transparency and accurate financial disclosures for small businesses, the proposed regulations as currently drafted still lack clarity and raise a number of issues. As such, Reliant Funding respectfully submits the following comments on the proposed regulations related to the implementation of SB 1235 for your consideration.



Section 2057(a)(4) – Definition “At the time of extending a specific commercial financing offer”

Under the proposed definition, disclosures would be required any time a “specific periodic payment or irregular payment amount, rate or price” is quoted to a recipient “based upon information from, or about, the recipient.” Reliant Funding believes that the current definition is extremely broad and may lead to confusion.

As currently drafted, disclosures would arguably be required while the provider and small business are still in the relationship building and discovery phase, early in the process. Small businesses may request quotes based on different anticipated terms and different funding amounts, with or without discussing factor. In turn, providers would be required to provide disclosures for each separate quote. This could lead to confusion on the part of the small business due to the multiple disclosures being provided. The timing of disclosures was contemplated with the implementation of the Truth in Lending Act (“TILA”), 12 C.F.R. §1026.17(a)(2), which only requires disclosures to be provided at or prior to consummation. It was recognized that providing disclosures each time a quote was provided or when negotiations were ongoing could result in confusion and pose problems for the provider and recipient. Therefore, Reliant Funding requests that the DFPI take into consideration the disclosure timing and only require disclosures to be provided at or prior to consummation.

Further, undue burden would result by requiring that disclosures be provided any time a specific periodic payment or irregular payment amount, rate or price is quoted to a recipient “based upon information...**about**” (emphasis added) the recipient. All information that is conveyed to a recipient by the provider is more than likely “about” the recipient. Thus, even if a provider has yet to obtain any financials from the recipient and was explaining the transaction using fictional numbers, but based on information “about” the recipient, a provider could arguably be required to provide disclosures. This would lead to completely inaccurate disclosures. It appears futile to provide the recipient with multiple and/or inaccurate disclosures when the recipient is trying to determine what amount it needs or which type of financing option would be best suited for the recipient. Thus, Reliant Funding would suggest deleting the word “about.”

Section 2057(a)(31) – Definition of “Recipient Funds”

The term “recipient funds” is referenced in many sections of the proposed regulations. However, it is unclear whether the definition of “recipient funds” is intended to exclude deductions for pay-offs and/or other fees and costs. It appears that the definition of “recipient funds” was meant to be the actual net disbursement amount provided to the recipient. If this is truly the intent of the DFPI – for the definition of “recipient funds” to be the net disbursement amount given to the recipient after deductions for pay-offs and/or other fees and costs – the definition should be clarified.



Section 2901 - Estimates – Sales Based Financing – Historical Method (Section 2091)

The historical method proposed by the DFPI for estimating projections under Section 2901(b)(2) states that “[a] provider shall fix the number of months considered to determine the recipient’s average monthly historical sales, income, or receipts for all transactions, or by recipient industry or **loan size** (or both)” (emphasis added). Because sales-based financing is not a “loan”, providers would not be utilizing, or taking into consideration, loan size to determine estimates. As such, the term “loan” should be replaced with the term “financing.”

Section 3023 – Duties of Financers and Brokers

Section 3023(a)(3) requires a financer to “[m]aintain a copy of the **evidence of transmission of the disclosures** provided by a broker to the financer in compliance with subdivision (b) for a period of at least four years following the date that the disclosure is presented to the recipient” (emphasis added). However, it is unclear what would constitute “evidence of transmission of the disclosures.” Reliant Funding requests clarification as to what would suffice as evidence to ensure compliance with this section.

Further, subdivision (b) requires a broker to provide the “evidence of transmission of the disclosures to the financer.” However, this section does not contemplate the possibility of fraud on the part of the broker and the potential liability that could be imputed on the provider. Subdivision (c)(2) states that this section is not to be construed to “[c]reate any liability for a broker if the disclosures that the financer provides do not comply,” but does not provide any safeguards or waiver for the provider. Thus, consideration should be given to ensure reciprocity.

Section 3024 – Other Laws

This section provides that this “subdivision shall not preclude a trier of fact from considering a provider’s statements in the disclosures required by this Chapter when assessing whether a transaction, based upon the totality of the circumstances, **is a loan under California law**” (emphasis added). This section should be deleted as a provider’s product should not be able to be classified as a loan due to disclosures required by the State. The ability to utilize the disclosures as evidence that a product is a loan, when it is not, exposes the provider to litigation and liability.



Closing

Again, we thank you for the opportunity to provide these comments. We are committed to working the DFPI on the proposed regulations for the implementation of SB 1235. If you have any questions upon your review of our comments contained herein, please do not hesitate to contact the undersigned at (858) 249-7340 or jmerris@reliantfunding.com.

Sincerely,

/s/ Jenny L. Merris

Jenny L. Merris
General Counsel