

## DEPARTMENT OF FINANCIAL PROTECTION & INNOVATION

### Title 10, Chapter X, California Code of Regulations

#### Subchapter X. Small Businesses, Nonprofits, and Family Farms

##### Section X.90009.1. Unfair, Deceptive, or Abusive Acts and Practices

(a) In connection with the offering or providing of commercial financing, as defined in subdivision (d) of Financial Code section 22800, or other offering or providing of financial products and services to small business recipients, nonprofits, and family farms, the following constitute unfair, deceptive, or abusive acts and practices, respectively.

(1) An act or practice is unfair and may not be engaged in by a person offering or providing commercial financing or other financial products and services if the act or practice meets one or more of the following.

(A) The act or practice violates another law.

(B) On balance, the harm from the conduct outweighs the utility of the conduct.

(C) The act or practice offends an established public policy, or the act or practice is immoral, unethical, oppressive, unscrupulous, or substantially injurious to a person.

(D) (1) The injury is substantial, (2) the injury is not outweighed by countervailing benefits, and (3) the injury could not reasonably have been avoided.

(2) An act or practice is deceptive and may not be engaged in by a person offering or providing commercial financing or other financial products or services if a small business, nonprofit, or family farm is likely to be deceived by the act or practice.

(3) An act or practice is abusive and may not be engaged in by a person offering or providing commercial financing or other financial products or services, if the act or practice does any of the following.

(A) Interferes with the ability of a small business, nonprofit, or family farm to understand a term or condition of a financial product or service.

(B) Takes unreasonable advantage regarding any of the following.

1. A lack of understanding on the part of the small business, nonprofit, or family farm of the material risks, costs, or conditions of the commercial financing or other product or service.
2. The inability of the small business, nonprofit, or family farm to protect its interests in selecting or using the commercial financing or other financial product or service.
3. The reasonable reliance by the small business, nonprofit, or family farm on a person offering or providing commercial financing or other financial product or service to act in the interests of the small business, nonprofit, or family farm.

(b) For purposes of this subchapter, the following definitions apply.

(1) "Small business" has the same meaning as in subdivision (c) of Code of Civil Procedure section 1028.5.

(2) "Nonprofit" means any type of organization organized under a state law authorizing the establishment of a nonprofit organization, where no part of the net earnings of the organization inures to the benefit of any owner, individual, or for-profit organization.

(3) "Family farm" has the same meaning as in 7 Code of Federal Regulations part 761.2(b), except that for purposes of this definition, "borrower" as used in the definition of family farm means any person seeking credit as defined in subdivision (g) of Financial Code section 90005.

### **Section X.90009.2. Commercial Financing Data**

(a) On or before March 31 of every year, each person engaged in the business of offering or providing commercial financing or other financial products or services to a small business, nonprofit, or family farm, including a provider under subdivision (m) of Financial Code section 22800, shall file the report required by this section with the Commissioner.

(b) Each person engaged in the business of offering or providing commercial financing or other financial products or services to a small business, nonprofit, or family farm shall report the following information regarding activity within this state for the calendar year preceding the due date of the report.

(1) The person's contact and organization identification information.

(2) By type of commercial financing or other financial products or services, the person's total number and total dollar amount of transactions in this state for the prior calendar year with small businesses, nonprofits, and family farms.

(3) By type of commercial financing or other financial products or services, the person's total number transactions in this state for the prior calendar year with small businesses, nonprofits, and family farms for financing over \$100,000, over \$50,000 but under \$100,000, over \$25,000 but under \$50,000, over \$10,000 but under \$25,000, and at or less than \$10,000.

(4) On or after the operative date for the regulations under Financial Code section 22804, for the commercial financing data reported under paragraph (3) of this subdivision, the minimum, maximum, average, and median total dollar cost of the financing at each interval set forth in paragraph (3).

(c) A person who reports data to the Commissioner under section 22159 of the California Financing Law (Fin. Code, § 22159) shall not report the same loan data to the Commissioner under this rule but shall report data on any other commercial financing or other financial products or services.