



CALIFORNIA  
**BANKERS**  
ASSOCIATION

October 28, 2020

Via email to [regulations@dbo.ca.gov](mailto:regulations@dbo.ca.gov)

Department of Business Oversight  
Attn: Charles Carriere, Senior Counsel  
One Sansome Street, Suite 600  
San Francisco, CA 94104-4448

Re: **File No.: PRO 01-18**

Ladies and Gentlemen:

The California Bankers Association (CBA) appreciates the opportunity to comment on the draft regulations issued by the Department of Business Oversight (“DBO”) and the DBO’s request for arguments in writing to the action proposed.

CBA has previously provided comments on this matter on January 22, 2019, and again on September 9, 2019. We commend those comments to you for your further action. We wish to draw your attention to a specific issue presented in our prior comment letters. CBA strongly reiterates its position that subsidiaries, affiliates and entities otherwise related to depository institutions, which are engaged in the business of commercial lending under federal regulatory oversight should be exempted from application of the proposed regulations in the same manner that depository institutions are exempted.

Specifically, CBA requests that a definition of “depository institution” should read as follows:

“Depository institution” means any of the entities defined under section 22800, subdivision (h) of the Code and includes any non-depository subsidiaries, affiliates and other entities related to such depository institutions that are subject to supervision and regulation by federal banking regulators.

Alternatively, this issue could also be addressed in the definition of “provider” in §2057(a)(19) of the regulations by adding the following new clause (C). Two alternatives for your consideration are as follows:

**Alternative 1**

“(C) A provider excludes any non-depository subsidiaries, affiliates and other entities related to a depository institution that are subject to supervision and regulation by federal banking regulators.”

## Alternative 2

“(C) A provider excludes: (i) any financial or bank holding company doing business under the authority of, or in accordance with, an approval issued by the United States, or (ii) any wholly-owned subsidiary of the foregoing or of a depository institution, that in each case is authorized to transact business in this state.”

Please note the Alternative 2 exclusion only applies to 100 % owned subsidiaries and affiliates of bank holding companies or depository institutions. These entities are highly regulated by a number of different federal banking supervisors and agencies, including the FRB, the OCC, the FDIC and the CFPB. The “wholly-owned” requirement ensures that only highly regulated affiliates are excluded. Lesser-owned affiliates, who are not highly regulated and thus from a policy standpoint should not be excluded, are not excluded.

As CBA has previously noted, the only Affiliates proposed to be exempted are those that are “subject to supervision and regulation by federal banking regulators”. DBO has supported a similar exemption in its Initial Statement of Reasons for Proposed Regulatory Action under the California Finance Lenders Law and the California Residential Mortgage Lending Act Pro 03/13.

We believe the proposed regulations would present significant challenges to both depository institution Affiliates and to the DBO itself. Examining for compliance with the proposed regulations, when Affiliates are already subject to and examined under the requirements of federal law, would impose an additional and significant burden on the DBO that would not provide material value.

CBA requests that DBO extend the depository institutions exemption in the proposed regulations to depository institutions’ subsidiaries, affiliates, and related entities that are supervised and regulated by federal banking regulators, on the grounds that existing federal law offers commercial borrowers dealing with those entities sufficient regulatory protection.

Lastly, CBA shares the concerns of Wells Fargo Bank that are articulated in their letter dated October 28, 2020, a copy of which is attached to this letter. We urge your careful consideration and recommended action in light of their comments.

CBA appreciates the opportunity to provide these comments and looks forward to continued work with DBO on this issue.

Sincerely,

CALIFORNIA BANKERS ASSOCIATION

By: \_\_\_\_\_

Mike Webb  
Vice President, Assistant General Counsel