

**October 27, 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](mailto:regulations@dfpi.ca.gov)  
[REDACTED]@dfpi.ca.gov  
[REDACTED]@dfpis.ca.gov

**Re: Comments on the Third Modifications to the Proposed Regulations on Commercial Financing Disclosures (PRO 01-18)**

Dear Ms. Sandoval,

On behalf of the Electronic Transactions Association (“ETA”), the leading trade association for the payments industry, we appreciate the opportunity to provide comments on the Department of Financial Protection and Innovation’s (“DFPI”) notice of third modifications to the proposed regulations (“Proposed Regulations”) under Division 9.5 of the California Financial Code.

ETA supports transparency in small business financing disclosures, including providing borrowers with the best information to compare costs across products and make informed decisions. We thank DFPI for its diligent efforts on the implementation of Sections 22800–22805 of the California Financial Code to give providers of commercial financing products certainty with respect to the content, timing, and format of required disclosures. However, we believe that additional modifications to the Proposed Regulations are necessary and have outlined them below.

#### **Section 956. Funding Recipient Will Receive**

Section 956 of the Proposed Regulations provides that when “the amount financed is greater than the recipient funds” a provider is required to provide an additional disclosure entitled “Itemization of Amount Financed”. ETA believes that this is overly prescriptive and could require inaccurate disclosures that will confuse consumers. This is especially true for the requirements that are not relevant for the financing products being offered. For instance, the proposed additional disclosure requirement includes a line for “prepaid finance charge” even if the loan product does not have one, such as a refinance loan. Therefore, DFPI should allow for exceptions and flexibility for loan products that are not relevant to the additional disclosure requirements. Without providing flexibility, consumers will likely become confused, and the disclosures will do more harm than good.

Furthermore, we would like to reiterate the necessity to require the disclosure of the compensation that a provider may pay to a broker. It is industry practice in the commercial financing market for brokers to receive fees from two sources: (1) fees paid directly by the recipient and (2) fees paid by the provider to the broker. While the disclosures require a provider to disclose any broker compensation that is being paid directly to the broker from the “amount financed”, it does not require any broker compensation that is paid outside of that.

If the goal of S.B. 1235 is to provide a recipient with disclosures that truly show the total cost of the financing, it is imperative that the fees being paid directly to the broker by the provider be disclosed, because otherwise the recipient is not aware that the broker fee is included in the finance charge and does not realize that this fee increases the cost of the product, which increases the annual percentage rate (“APR”). Recipients will wrongly believe that the financier is getting all the finance charge, when in actuality the broker is getting a significant portion of the cost of the financing. The solution would be for the regulations to require disclosure of the total amount of compensation that a financier pays to a broker so that the recipient has a full understanding of the costs of the financing.

### Average Monthly Cost

The Proposed Regulations require the disclosure of an average monthly cost for non-monthly pay products. This will not only lead to confusion to recipients but adds no added value to the disclosures. S.B. 1235 requires the frequency and amount of payments, which is the actual frequency and the actual amount of payments, not a hypothetical frequency and payment. It does not make sense that a provider should have to disclose a frequency and an amount that is not a part of the financing contract nor is a required payment.

This will only add to confusion for the recipient as a recipient might believe, even with the proper disclosures, that it is receiving a monthly pay product. Many providers offer daily or weekly pay products and others don't have a fixed payment but rather take a percentage of receivables. By requiring those providers to disclose an average monthly cost that has no bearing on the actual frequency and payment is not only misleading but goes against the whole premise of S.B. 1235, which is to provide clear and meaningful disclosures. Because of this, we would recommend deleting any requirement for non-monthly pay products to disclose an average monthly cost.

### APR Disclosure

ETA would like to reiterate its prior comments that APR is not the correct metric for commercial financing disclosures and will only cause additional confusion. Moreover, the way the Proposed Regulations require calculation of the APR will not lead to an apples-to-apples comparison across products and will create material confusion. We would request our prior comments on APR be included by reference.

### Implementation Date

ETA would like to reiterate comments submitted to DFPI on April 26, 2021, and August 24, 2021, regarding the implementation date of the proposed regulations. Given that companies will be required to implement significant changes on the back end, DFPI should provide an implementation date, and that implementation date should be at least 6 months after the final regulations are released. This time period, which comports with previous comments by the Department,<sup>1</sup> would ensure that companies would have enough time to make internal changes and work with vendors and other third parties to ensure a smooth implementation.

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We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any aspect of our comments, please contact me or ETA Senior Vice President of Government Affairs Scott Talbott at [stalbott@electran.org](mailto:stalbott@electran.org).

Respectfully Submitted,



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<sup>1</sup> <https://dfpi.ca.gov/wp-content/uploads/sites/337/2020/09/Initial-Statement-of-Reasons-SB-1235-9.2.pdf>