



Innovative Lending Platform Association

October 27, 2021

SENT VIA EMAIL: regulations@dfpi.ca.gov cc: [REDACTED]@dfpi.ca.gov
cc: [REDACTED]@dfpi.ca.gov

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

Re: Notice of Third Modifications to Proposed Regulations Under Division 9.5 of the California Financial Code Pro 01/18

Dear Ms. Sandoval,

The Innovative Lending Platform Association (ILPA)¹ appreciates the opportunity to provide comments on the California Department of Financial Protection and Innovation's (DFPI) third modification to proposed regulations for SB 1235 (Chapter 1011, Statutes of 2018). ILPA applauds DFPI's goal of ensuring that small businesses receive comprehensive and transparent financing disclosures and for engaging in a thoughtful, collaborative approach to promulgating regulations for SB 1235.

While we generally support DFPI's draft regulations, ILPA offers several recommendations outlined below and reiterates its request that DFPI considers approving alternative forms for small business financing disclosures.

Recommendations:

Removing State-Specific Language –

As the Department knows, New York recently enacted their version of Senate Bill 1235, and several states are considering similar legislation as well. To ensure that providers may use the same disclosure form for states with similar, or ideally, identical disclosure requirements, we suggest removing the requirement for any state-specific language in the disclosure form. For example, § 901 states, "the provider shall print the following statement: "California law requires this information to be provided to you to help you make an informed decision." We suggest replacing "California" with "state law" to provide the necessary flexibility and will help facilitate the adoption of uniform disclosure forms across states.

Clarifying 952(b) –

The current language states, "Following receipt of the disclosures required by subdivision (a)(1) of this section, and before communicating a specific commercial financing offer to a recipient, a broker shall transmit the unaltered, **disclosures received by the financier to the recipient.**" We suggest rewording the bold section to make it clear what the broker's responsibilities are. We suggest changing this section to: "Following receipt of the disclosures required by subdivision (a)(1) of this section, and before communicating a specific commercial financing offer to a recipient, a broker shall transmit the unaltered **disclosures received from the financier to the recipient.**"

Implementation and Compliance –

In the "Initial Statement of Reasons" the Department released in October of last year, it was indicated that there would be a six-month delay in the effective date of the regulations. As the Department is aware, this issue is extraordinarily complex. ILPA members support transparency and want to provide the necessary information accurately to their small business customers. In practice, developing and testing a feature for quality assurance like the commercial disclosure page takes months of planning, coordination across departments and significant implementation work, all while commercial lenders need to attend to their regular business and help small businesses as they recover from the economic effects of COVID-19. As such, we recommend the Department exercise its discretion and request a six-month grace period for providers to adapt their systems to the new requirements set out by these regulations.

Alternative Disclosure Forms-

ILPA was an industry leader in developing a standardized commercial disclosure. This disclosure – the SMART Box® – presents small businesses with comprehensive pricing metrics and identifies key financing terms in plain, easy-to-understand language.

As discussed in our prior comments, the DFPI has the authority to approve additional complaint forms. Accordingly, we request that the DFPI revise the proposed final regulations to allow Department approved disclosures that otherwise satisfy the statutory requirements of SB 1235. The DFPI can achieve this by either creating a formal path for approving alternative formats like SMART Box or by approving individual financiers' disclosures on a case-by-case basis.

In the latter approach, the DFPI could ensure that alternative disclosures are adequate by allowing financiers to obtain DFPI approval of alternatives before implementation. Accordingly, we reiterate our request for the DFPI to implement a process for approving alternative forms that meet the minimum statutory requirements laid out in SB 1235, and ILPA intends to seek confirmation from DFPI that SMART Box is an approved disclosure form.

In addition, the requirements laid out in the proposed regulations are overly prescriptive and go beyond what SMART Box and supporters of SB 1235 requested. The requirements of font type and font size fail to consider different modes of disclosure. Notably, 12-14 point Times New Roman font requirements are problematic when considering mobile screens. We suggest DFPI take a more concept-based approach and give providers the flexibility to determine size and font types, under the guidance of which metrics must be prominently disclosed, as laid out by regulations.

We look forward to continuing to work with the DFPI on this critical rulemaking process. If you have any questions, please do not hesitate to contact me at scott@innovativelending.org.

Best regards,

Scott Stewart, CEO
Innovative Lending Platform Association

¹ ILPA is the leading trade organization for companies focused on online, small business financing services. Our member companies share a commitment to the health and success of our nation's small businesses. They are dedicated to advancing best practices and standards that promote responsible innovation and access to capital. Our member companies consist of A10 Capital, BFS Capital, Biz2Credit, BlueVine, Fundbox, Funding Circle, Kabbage/AMEX, Lendio, Mulligan Funding, OnDeck (Enova), Paynet/Equifax.