



October 27, 2021

RE: NOTICE OF THIRD MODIFICATIONS TO PROPOSED REGULATIONS UNDER DIVISION 9.5 OF THE CALIFORNIA FINANCIAL CODE PRO 01/18

Commissioner of Financial Protection and Innovation

Attn: Sandra Sandoval, Regulations Coordinator

300 South Spring Street, 15th Floor

Los Angeles, CA 90013

Attention: Charlie Carriere and Jesse Mattson

Via electronic mail: regulations@dfpi.ca.gov, [REDACTED]@dfpi.ca.gov, [REDACTED]@dfpi.ca.gov

Dear Mr. Carriere and Mr. Mattson:

The Responsible Business Lending Coalition and the California Association for Micro Enterprise Opportunity would like to thank the Department of Financial Protection and Innovation (“DFPI”) for its publication of the third modification to commercial disclosure regulations to implement Senate Bill 1235.¹ Since the publication of this modification, New York Department of Financial Services has released two modifications to its proposed regulations to implement its commercial disclosure regulations.²

Our comments focus on creating harmonization between California and New York law so that providers can use one disclosure nationwide, which would empower all small businesses in this country with truth-in-lending disclosures.

Remove State Specific Language

The disclosures required by DFPI under this regulation can be a model for the nation, quite literally: We anticipate firms may seek to use a single disclosure that complies with DFPI regulations across all 50 states. However, the required reference to “California Law” in the text of the required disclosure would prevent this same disclosure from being used outside of California’s borders. (Small business lenders will not show small businesses in Texas or New York a disclosure that says it is required by “California Law.”)

¹ State of California Department of Financial Protection and Innovation, “CALIFORNIA CODE OF REGULATIONS TITLE 10, CHAPTER 3 Third Modifications,” Oct. 12, 2021. <https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/10/2021-10-12-SB-1235-Regulations-For-Publication.pdf>

² New York State Department of Financial Services, “Proposed Financial Services Regulation New 23 NYCRR 600: Disclosure Requirements for Certain Providers of Commercial Financing Transactions”

https://www.dfs.ny.gov/system/files/documents/2021/10/rp_23nycrr600_text_202110.pdf

New York State Department of Financial Services, “Pre-Proposed Regulation - Financial Services: Draft of Proposed 23 NYCRR 600: Disclosure Requirements for Certain Providers of Commercial Financing Transactions” Accessed via Wayback Machine on Oct. 27, 2021.

https://web.archive.org/web/20210929194535/https://www.dfs.ny.gov/system/files/documents/2021/09/pre_proposed_fs_sect600.pdf

We recommend striking “California Law” and replacing it with “Applicable law” in §901 General Requirements (2) in order to allow the use of the disclosure nationwide and to also conform with New York proposed regulations under Section 600.05 General formatting requirements (b).

Accuracy and Accountability

To properly regulate providers that opt in to use estimated APR and ensure accuracy in their disclosures to small businesses, DFPI should implement reporting regulations that require providers to report annually:

- (1) for each commercial financing transaction undertaken as defined by the regulations, the estimated annual percentage rates disclosed to the recipient and actual retrospective annual percentage rates of completed transactions;
- (2) the annual mean of all differences between the estimated annual percentage rates disclosed to the recipient and actual retrospective annual percentage rates of completed transactions, which mean shall be reported both weighted by financing amount, and unweighted;
- (3) a statement of any unusual and extraordinary circumstances impacting the provider's deviation between estimated and actual annual percentage rate; and
- (4) such other information prescribed by the Commissioner as necessary or appropriate for the purpose of making a determination of whether the deviation between the estimated annual percentage rate and actual retrospective annual percentage rates of completed transactions was reasonable.

We would refer DFPI to “Section 600.22 Reporting” of New York’s proposed regulations for the exact language and reporting requirements.

If DFPI is unable to include this critical reporting through these regulations following from SB 1235, it should require this reporting in the rulemaking taking place on small business data collection following from AB 1864.

Effective Date and Compliance Date

We recognize and fully appreciate that the implementation of these disclosures can take time for providers to properly implement and therefore we ask DFPI to be consistent with New York’s proposed regulations: that the compliance date be extended to six months from the effective date of the regulations.

We thank the DFPI and staff for their work on this important regulation: ensuring that it meets the intent of SB 1235 and is flexible enough to promote innovation and take into account various practices and changes in the small business lending industry.

Sincerely,

The Responsible Business Lending Coalition

California Association for Micro Enterprise Opportunity