Submitted by Electronic mail to: regulations@dfpi.ca.gov, with a copy to: _____@dfpi.ca.gov and _____@dfpi.ca.gov

October 27, 2021

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

Re: File No.: PRO 01-18 – Seventh Invitation for Comments on Proposed Rulemaking for Commercial Financing Disclosures ("Invitation")

Dear Commissioner Alvarez,

The Small Business Financial Association ("SBFA") would like to once again thank the California Department of Financial Protection and Innovation ("DFPI") for reaching out for input on the above proposed regulations ("Regulations").

Annual Percentage Rate

The requirement for an annual percentage rate ("APR") disclosure should be removed as it is not the best metric to use in a commercial financing disclosure because it will lead to confusing and misleading disclosures. The Truth in Lending Act ("TILA") was created so that consumers would compare costs and have an apples to apples comparison. By requiring providers to take TILA and apply it to commercial financing, which TILA was not intended to cover, creates material risks and can lead to inaccurate disclosures. TILA does not take into account financing products with daily or weekly payments and therefore, is not the right metric to use in commercial financing when products have daily and weekly payments. Moreover, the Regulations require that APR be calculated in accordance with Appendix J, 12 C. F. R. Part 1026, which only covers closed-end transactions and does not apply to closed-end transaction. This is a major problem is the Regulations are now requiring open-end transactions to be calculated in accordance with TILA's

closed-end transactions. The entire basis for SB 1235 was for recipients to have an apples to apples comparison when comparing financing products. However, the use of APR, and especially the requirement for open-end transactions to be calculated under closed-end transaction, does not allow for those comparisons to happy. Because of this, you can now have a consumer and a business get the exact same financing offer (one offer being calculated under TILA and one offer being calculated under the proposed Regulations) and the APR will be different. Moreover, there will be situations where a business get the exact same product offering but one from a bank and one from a non-bank and the APR will be different, as the bank will likely follow TILA's calculations. The APR requirement and calculation do not further the intent of SB 1235 but actually hinder it by not creating uniform disclosures across different financing products.

Disclosure of the Average Monthly Cost

In our prior comments, we have repeatedly brought up our concerns with requiring the disclosure of a monthly payment for non-monthly pay products. Since the DFPI has yet to address our comments and concerns, we would once again, like to reiterate that the disclosure of a monthly cost for a non-monthly pay product should be removed from the proposed Regulations. The requirement to include the disclosure for non-monthly pay products does not comply with any provision of SB 1235 and is detrimental in creating confusion with recipients.

As stated in our previous comments, the SBFA was extremely involved in the drafting of SB 1235 and had numerous conversations with Senator Glazer surrounding whether or not to disclose a monthly payment for non-monthly pay products. It was Senator Glazer's intent to not to include a monthly payment disclosure for non-monthly pay products as it could be confusing to recipients. Moreover, as SB 1235 1235 requires that only the "method, frequency, and amount of payments" be disclosed, the additional of a monthly pay disclosure is not within the authority of the DFPI to add such a disclosure. It was the intent of SB 1235 to only disclose the actual payment amount and frequency, not some arbitrary payment that is not was the recipient is contracting for. Displaying the average monthly cost will only do more hard than good and is not within the framework of SB 1235.

Furthermore, by requiring a provider to state a monthly cost for a non-monthly pay product opens providers up to litigation for misleading disclosures. It is extremely misleading to have an average monthly payment on a disclosure when the actual payment of the product is daily or

weekly. While providers do the best to explain and display the terms of the financing, by disclosing a monthly payment, when such disclosure is being displayed prior to the actual payment, a lot of recipients will believe (regardless if there is language to state this is not the actual payment amount) that they have a monthly pay product. Moreover, there could be circumstances that some brokers may try to present the financing offer as a monthly pay product to some recipients, which is intentional misrepresentation, because the disclosure will show such amount. There are a number of recipients that request a monthly payment, but a lot of providers do not offer a monthly pay products, so recipients may be confused and not understand that when they see the monthly payment the actual payment of the financing is daily or weekly. While there is the requirement for language to state that the average monthly payment is not the actual payment, as we have seen before, some recipients might not read the fine print, especially due to the voluminous number of disclosures and explanations being required by the DFPI.

Due to the numerous issues with providing an average monthly cost for a non-monthly pay product, the SBFA highly suggests that this be deleted across all parts of the Regulations.

Pre-Payment

Our concerns regarding prepayment are still at issue and have not been addressed by the DFPI. The SBFA still has concerns over the prepayment requirement in its current form. While we are not opposed to disclosing that there may be a prepayment penalty, we think the way it is required by the proposed Regulations is incorrect, confusing and not helpful. It should be amended so that it makes sense, is easy to read and is meaningful.

SB 1235 only required that there be a description of the policy. As different providers have different policies it would make more sense to have generic language that informs the client if there are prepayment penalties or not. Another alternative would be that the disclosure state to look at a specific section in the provider's contract for the prepayment policy. This would be in line with The Truth In Lending Act ("TILA") and how it handles prepayment disclosures. TILA only requires a simple statement about prepayment penalties because requiring disclosure of amounts because doing so creates confusion. We would suggest that the DFPI follow TILA and only require a simple statement.

Conclusion

We continue to look forward to working with the DFPI to provide small business owners with a meaningful disclosure.

Best,

Steve Denis

Executive Director