



## *Innovative Lending Platform Association*

November 19, 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 Fourth 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)<sup>1</sup> appreciates the opportunity to provide comments on the California Department of Financial Protection and Innovation's (DFPI) fourth 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.

We appreciate the changes DFPI has made to the proposed regulations over the past three iterations and the attempts to conform with similar regulations proposed in New York. As the proposed regulations continue to approach finalization, we have two recommendations for the Department to consider.

### **Recommendations:**

#### **§ 956 (b)(2) Itemization of Amount Financed-**

We believe there may be an error in the table provided in the draft regulations. Specifically, we believe that #7, "Amount Financed (5 minus 6)" should be " Amount Financed (5 plus 6) instead of "5 minus 6".

In the Itemization of Amount Financed chart, #1, "Amount Given Directly to You," is the total amount to the customer's bank account. If a provider charges an origination fee and deducts the fee from the loan amount before disbursement, that inherently would be excluded from #1, "Amount Given Directly to You." However, the origination fee is also a prepaid finance charge, so as currently drafted, the draft regulations would, in this circumstance, require deducting the origination fee a second time.

#### **Implementation and Compliance –**

We reiterate our request for a 6-month compliance window from when regulations are complete until they become effective.

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 correctly to their small business customers. Practically, developing and testing a feature for quality assurance like the commercial disclosure page takes months of planning, coordination across departments, and work. In contrast, commercial lenders need to attend to their regular business and help small businesses 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.

#### Opportunity for Approval of Alternative Disclosure Forms-

As the Department is aware, ILPA was already an industry leader in developing a standardized commercial disclosure before the adoption of SB 1235. The SMART Box® presents small businesses with comprehensive pricing metrics and identifies key financing terms in plain, easy-to-understand language, and aligns with the intent and spirit of SB 1235. In fact, we believe the Department used SMART Box as a guide in drafting these regulations.

As discussed in our prior comments, we request the Department consider creating a mechanism for approving alternative disclosure forms that meet all of the statutorily required provisions of SB 1235 while allowing ILPA members to continue to use the SMART Box®. To this end, we request adding a new section to the regulations, “§ 957 – Approval of Alternative Forms: The Department may approve disclosure forms that meet the statutory requirements of Chapter 1011, Statutes of 2018. This gives providers some flexibility in offering small business financing disclosures and allows for innovative new forms in the future. In addition, as more states adopt similar regulations (Connecticut, Maryland, New Jersey, North Carolina, and Pennsylvania have all considered similar laws, and more states will inevitably pass these laws), this allows for a pathway for providers to use the same form to satisfy multiple states. Already, New York and California have small differences in their disclosure form requirements. The ability for the Department to approve alternative firms will decrease regulatory burdens on providers while still meeting the spirit and letter of SB 1235.

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](mailto:scott@innovativelending.org).

Best regards,

Scott Stewart, CEO  
Innovative Lending Platform Association

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<sup>1</sup> 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.