

August 8, 2022

Department of Financial Protection and Innovation
Attn: Sandra Navarro
2101 Arena Boulevard
Sacramento, California 95834

Re: PRO 02-21 - Commercial Financial Products and Services

Dear Ms. Navarro:

On behalf of the American Financial Services Association (“AFSA”)¹, thank you for the opportunity to provide comments on the Department of Financial Protection and Innovation’s (“DFPI” or “Department”) proposed rulemaking related to Commercial Financial Products and Services (PRO 02-21) under the California Consumer Financial Protection Law (“CCFPL”). We believe clear rules from the Department that reflect existing statutes will benefit consumers and financial institutions alike, and we look forward to engaging with the Department throughout the rulemaking process.

Though AFSA members primarily offer consumer credit, our members also provide financing to commercial entities. Many AFSA members are also regularly engaged with California’s automobile dealers to provide them with the financial services necessary to enable these dealers to acquire their inventories of vehicles—known as “floorplan” lending—and other similar lines of credit. Floorplan financing and other credit arrangements in our industry are standard transactions that are already well-understood by sophisticated business parties.

Exempt Entities

When the legislature enacted the CCFPL it exempted certain entities from the law’s requirements, including licensed finance lenders in Section 90002(b)(2) and certain depository institutions in 90002(c), among others. Although the statute exempts certain entities, the rules do not clearly reinforce these exemptions, which may cause confusion as to who must comply with the rules. Accordingly, we request an amendment to the rules making clear that any entity exempt from the CCFPL is also exempt from the rules.

When the legislature enacted the Commercial Financing Disclosure Law (Section 22800 *et Seq*), it also exempted certain entities and transactions from the law’s requirements, including floorplan financing and certain depository institutions, in Section 22801. In putting in place these exemptions, the legislature recognized that the commercial financing disclosure requirements may not be a fit for certain types of transactions. Similarly, the proposed rulemaking is not a fit for floorplan financing and other financing to auto dealers, and the rules leave it unclear which entities may be subject to its requirements.

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

Automobile dealers must purchase the cars that they hold for sale. Acquiring cars to stock a dealership lot requires a significant capital outlay. Dealers either do not have the funds on hand to purchase these cars or do not wish to tie up their working capital in inventory, which can take months to sell. As a result, dealers turn to floorplan lenders to finance their inventory.

Floorplan lenders are financial institutions that provide floorplan inventory financing to automotive vehicle dealers through revolving or open-end credit lines. Under the terms of this financing, floorplan lenders finance vehicles as they are acquired by dealers. In addition, a floorplan lender may advance against vehicles already existing in a dealer's inventory. Generally, an advance is a loan until the dealer sells the particular vehicle for which the advance was made. Within a specified number of days following the sale of a vehicle, the dealer must remit the principal amount advanced for that vehicle to the floorplan lender. As a result, there is no traditional payment schedule. In addition, some lenders do not provide explicit credit limits to dealers. And for lenders that do provide explicit credit limits, these limits may be subject to change based on factors such as: the borrower's business strategy, the borrower's creditworthiness, seasonality, automobile manufacturers' production schedules, etc.

Interest accrues through the date of repayment of that advance. The interest rate on floorplan financing is a floating rate, generally tied to a base rate, such as the prime rate, and often with an additional increment assessed above the base rate. Accordingly, as base rates change, a dealer's interest rate also will change. Finally, these facilities frequently do not contain a term. Instead, a floorplan financing credit line will remain open and available until either the floorplan lender or the dealer borrower elects to terminate it.

Definitions

Section 1060(f) of the proposed regulation provides "Financial product or service" has the same meaning in Financial Code Section 90005 subdivision k, except that "consumer" in such definition also includes corporation, business, trust, partnership, proprietorship, syndicate, limited liability company, association, joint stock company and any other organization or legal or commercial entity. This definition is overly broad and captures many commercial entities that possess the required business acumen, have practical knowledge and the ability to make good judgments about the commercial products they are seeking. Additionally, these larger entities (public and private) have financial officers/executives and attorneys to review and negotiate the financial terms of financial products they receive. Therefore, the entities described should be limited to those that truly meet the "small business" definition in Section 1060(h). The "small business" definition includes those businesses that are independently owned and operated, have no dominance in their field of operation and are of a smaller industry size based upon annual receipts. It's these types of entities that are quasi-consumer in nature and may stand to benefit from the proposed regulatory protections.

Similarly, we believe the proposed regulation should incorporate a dollar threshold for the financial product or service the Department will regulate. The Legislature's goal with these protection is to improve accountability and transparency in California's marketplace and to protect California residents and those quasi-consumer small business entities that may not possess requisite business knowledge. Financial products and services for these types of customers tend to be smaller, so we

believe a threshold amount of \$250,000 or less would be appropriate, with larger transactions excluded from the definition of covered products or services.

Reporting Requirements

The annual reporting requirements in Section 1062 are particularly mismatched for floorplan financing. Without a clear exemption, the rules could create the inefficient result of requiring floorplan finance providers to report to the Department each individual vehicle on a dealer's lot as separate transactions under 1062(b)(3), which would lead to a significant compliance burden for lenders and limited additional information for the Department. The revolving and floating rate nature of the product would make the reporting required by 1062(b)(4) unworkable. Ultimately, this would not provide any informational benefits to the Department and is inconsistent with the legislature's intent.

Additionally, 1062(b)(4) requires reporting by type of commercial financing or other financial product or service. It is not clear from the regulations whether type refers to the categories of covered consumers listed in 1060(c)(1). If so, these categories are not standard designations in the commercial financing industry, which will make compliance challenging and require significant manual adjustments or determinations in order to report them.

As outlined above, because the legislature made its intent clear in both the CCFPL and Commercial Financing Disclosure Law, we respectfully request that the Department amend the rules to clearly reflect and reinforce the exemptions in Section 90002 of the CCFPL and Section 22801 of the Commercial Disclosure Law; narrow the definition of financial product or service and incorporate a \$250,000 threshold for covered products and services; and amend the reporting requirements.

Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss it further, please do not hesitate to contact me at [REDACTED] or at [REDACTED].

Sincerely,

[REDACTED]
Matthew Kownacki
Director, State Research and Policy
American Financial Services Association