

July 26, 2022

VIA ELECTRONIC MAIL

Department of Financial Protection and Innovation
Attn: Sandra Navarro
2101 Arena Boulevard
Sacramento, California 95834
Email: regulations@dfpi.ca.gov
Cc: Samuel.Park@dfpi.ca.gov

Re: Proposed Regulations on Commercial Financial Products and Services Under the California Consumer Financial Protection Law (PRO 02-21)

Dear Ms. Navarro,

Our firm represents parties who are interested in the above reference proposed regulations and who are grateful for this opportunity to assist the DFPI in issuing clear and meaningful regulations to support small business financing. Therefore, on their behalf, we submit the following comments.

The proposed regulations require annual reporting by type of “commercial financing or **other financial product or service**.” (emphasis added). See proposed regulations §§ 1062(b)(2)-(4). The specific information required to be disclosed includes, among other things, the total number, dollar amount, and APR range of each type of financial product or service. We note that this type of information would generally be readily available from the originator of a commercial financing. However, the definition of “other financial product or service” also includes a number of financial products and services that do not appear to lend themselves to reporting this type of information.

For example, the provision of real estate settlement services, deposit-taking activities, selling of stored value, check cashing, and providing payments and data processing products and services to commercial customers in subsections (3)-(7) of Cal. Fin. Code § 90005(k) do not appear to lend themselves to the type of data that is to be collected under the proposed regulations. In light of the foregoing, it appears that the annual reporting requirement should apply only to covered providers that originate commercial financings, *i.e.*, those covered providers that are required to disclose this type of information to customers under Cal. Fin. Code §§ 22802 and 22803 and the recently finalized commercial financing disclosure regulations set forth at 10 CCR §§ 900 *et seq.*

By contrast, providers of “other financial products or services” should be exempted from the reporting requirement, since most of the information would be inapplicable in the cases noted

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above. Further, in the case of covered providers that offer third-party servicing for commercial financing providers, this information (i) would likely be duplicative of information already required to be submitted by the originators of such commercial financings, and (ii) would be based entirely on information provided by the originator rather than any independent knowledge of the loan servicer.

In short, to avoid potentially incompatible, duplicative, and derivative data reporting, one possible approach would be to make the following adjustments to the proposed regulations: (i) remove any requirement to report on “other financial products and services” in § 1062(b); and (ii) clarify § 1062(a)(2) to exempt a covered provider from reporting obligations with respect to the provision of “other financial products or services” to covered consumers during the calendar year.

Alternatively, if the DFPI would like to collect pertinent information from such covered providers regarding “other financial products or services,” the DFPI may wish to consider requiring such providers to report only the information required under proposed regulation §§ 1062(b)(1) and (2), and otherwise be exempted from reporting requirements in proposed regulation §§ 1062(b)(3) and (4).

On behalf of the various interested parties our firm represents, we thank you for your consideration of the foregoing comments. If you have any questions upon your review of the information contained in this comment letter, please do not hesitate to contact us at the number listed above.

Very truly yours,



Moorari K. Shah
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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