

FIRST MODIFIED TEXT OF PROPOSED REGULATIONS

DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

TITLE 10. INVESTMENT

CHAPTER 3. COMMISSIONER OF FINANCIAL PROTECTION AND INNOVATION

(The original text, all of which was new except for the addition and deletion in subchapter 4, is shown without underline. The first modifications to the text are shown with underline for additions and strikethrough for deletions.)

Subchapter 4. ~~Industrial Loans~~ ~~[Repealed]~~ California Consumer Financial Protection Law

Article 4. Commercial Financial Products and Services

§ 1060. Definitions

In this article:

(a) “Average” refers to arithmetic mean.

(b) “Commercial financing” has the same meaning as in Financial Code section 22800, subdivision (d).

(c) “Commercial financing transaction” means a consummated commercial financing transaction for which a disclosure is provided in accordance with California Code of Regulations, title 10, section 920, subdivision (a).

(de)-__(1) “Covered entityconsumer” means a small business, nonprofit, or family farm whose activities are principally directed or managed from California.

(2) For the purpose of determining whether activities are “principally directed or managed from California,” a covered provider may rely on any relevant written representation by the small business, nonprofit, or family farm, including a business address provided in any application or agreement for commercial financing or other financial product or service.

(ed)-__(1) “Covered provider” means any person engaged in the business of offering or providing commercial financing or another financial product or service to a covered entityconsumer.

(2) “Covered provider” does not include any person exempted from division 24 of the Financial Code under Financial Code section 90002.

(fe) “Family farm” means a business operation:

(1) That produces agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence.

(2) In which a substantial amount of physical operating labor is provided by, the majority of day-to-day, operating decisions are made by, and all strategic management decisions are made by:

(A) the consumer, with input and assistance allowed from relatives of the consumer, in the case of an individual consumer seeking credit, or

(B) the members responsible for operating the farm, in the case of an entity seeking credit.

(3) That may use full-time hired labor in amounts only to supplement family labor.

(4) That may use reasonable amounts of temporary labor for seasonal-peak workload periods or intermittently for labor-intensive activities.

(g) “Financial product or service” has the same meaning as 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 and “consumer financial product or service” in such definition also includes a financial product or service that is offered or provided for use primarily for other than personal, family, or household purposes.

(h) “Nonprofit” means any organization not organized for profit and no part of the net earnings of which inures to the benefit of any individual or entity.

(i) “Small business” means a business entity organized for profit with annual gross receipts of no more than \$16,000,000 or the annual gross receipt level as biennially adjusted by the Department of General Services in accordance with Government Code section 14837, subdivision (d)(3), whichever is greater. For the purpose of determining a business entity’s annual gross receipts, a covered provider may rely on any relevant written representation by the business entity, including information provided in any application or agreement for commercial financing or other financial product or service.~~has the same meaning as in Code of Civil Procedure section 1028.5, subdivision (e).~~

(j) Terms defined in Financial Code section 90005 but not defined in this article shall have the meanings ascribed to them in section 90005.

Note: Authority cited: Section 90009, Financial Code. Reference: Sections 90005 and 90009, Financial Code.

§ 1061. Unfair, Deceptive, and Abusive Acts and Practices

(a) It is unlawful for a covered provider to engage or, have engaged, ~~or propose to engage~~ in any unfair, deceptive, or abusive act or practice in connection with the offering or provision of commercial financing or another financial product or service to a covered entity.

(b) An act or practice is unfair if either:

(1) (A) The act or practice causes or is likely to cause substantial injury to covered entities ~~consumers~~;

(B) the injury is not reasonably avoidable by covered entities ~~consumers~~; and

(C) the injury is not outweighed by countervailing benefits to covered entities ~~consumers~~ or to competition.

(2) The act or practice is unfair ~~within the meaning of~~ in accordance with Business and Professions Code section 17200 and the case law thereunder.

(c) An act or practice, including a representation or omission, is deceptive if either:

(1) (A) The act or practice misleads or is likely to mislead the covered entity ~~consumer~~;

(B) the covered entity’s ~~consumer’s~~ interpretation of the act or practice is reasonable under the circumstances; and

(C) the act or practice is material.

(2) The act or practice is deceptive ~~within the meaning of~~ in accordance with Business and Professions Code section 17200 and the case law thereunder.

(d) An act or practice is abusive if either:

(1) The act or practice materially interferes with the ability of a covered entityconsumer to understand a term or condition of commercial financing or another financial product or service.

(2) The act or practice takes unreasonable advantage of:

(A) a lack of understanding on the part of the covered entityconsumer of the material risks, costs, or conditions of the commercial financing or other financial product or service;

(B) the inability of the covered entityconsumer to protect its interests in selecting or using commercial financing or another financial product or service; or

(C) the reasonable reliance by the covered entityconsumer on a covered provider to act in the interests of the covered entityconsumer.

(e) In any action brought under Financial Code section 90015 for violations of this section, the commissioner may include a claim for ancillary relief as set forth in section 90012, subdivision (b).

Note: Authority cited: Section 90009, Financial Code. Reference: Sections 90005, 90009, 90012, and 90015, Financial Code.

§ 1062. Annual Report

(a) This section does not apply to any ~~of the following~~:

~~(1) A covered provider who makes no more than one commercial financing transaction to covered entitiseconsumers in a 12-month period or any covered provider who makes five or fewer commercial financing transactions to covered entitiseconsumers in a 12-month period that are incidental to the business of the covered provider relying on this exemption.~~

~~(b) In this section, “type of commercial financing” refers to one of the types of commercial financing listed in California Code of Regulations, title 10, section 917, subdivision (a), or, if the commercial financing does not meet the definition of any of the listed types, an “Other” type.~~

~~(2) A covered provider who, during the preceding calendar year, did not engage in any transactions with covered consumers involving commercial financing or “extending credit and servicing extensions of credit” as defined in Financial Code section 90005, subdivision (k)(1).~~

~~(c)~~ On or before March 15 of each year, beginning in 2025, any~~each~~ covered provider who offers commercial financing shall file electronically through the department’s website a report verified by an authorized officer and containing the following information for activity during the preceding calendar year:

(1) The covered provider’s identifying and contact information, including name, any fictitious business names, entity type, mailing address, phone number, email address, website address, and designated contact person.

(2) By type of commercial financing ~~or other financial product or service~~, the total number and total dollar amount of commercial financing transactions with covered entitiseconsumers.

The dollar amount of a commercial financing transaction is the “amount financed” as defined in California Code of Regulations, title 10, section 900, subdivision (a)(1).

(3) By type of commercial financing ~~or other financial product or service~~, the number of commercial financing transactions with covered ~~entities~~consumers for the following amounts financed: \$10,000 or less, over \$10,000 but not over \$25,000, over \$25,000 but not over \$50,000, over \$50,000 but not over \$100,000, over \$100,000 but not over \$250,000, and over \$250,000 but not over \$500,000, ~~and over \$500,000~~. The covered provider shall determine the amount financed in a transaction according to the definition of “amount financed” in California Code of Regulations, title 10, section 900, subdivision (a)(1)~~the regulations adopted under Financial Code section 22804~~.

(4) By type of commercial financing ~~or other financial product or service~~ and for each interval described in paragraph (3), the minimum, maximum, average, and median annual percentage rate disclosed in disclosures required to comply with California Code of Regulations, title 10, section 920, subdivision (a). For a given type of commercial financing and interval, if the covered provider did not provide any disclosures required to comply with section 920, subdivision (a), the covered provider is not required to calculate or report the information described in this paragraph and shall so indicate ~~total cost of financing expressed as an annualized rate. The method of calculating the total cost of financing expressed as an annualized rate for a given type of commercial financing or other financial product or serve shall be the same method used in complying with the regulations adopted under Financial Code section 22804~~.

~~(de)~~ A covered provider who is licensed under division 9 (commencing with section 22000) of the Financial Code reports information to the commissioner under Financial Code section 22159 of the California Financing Law shall not include in the report required under this section information for activity conducted under the authority of that license~~report that information to the commissioner under this section~~.

Note: Authority cited: Section 90009, Financial Code. Reference: Sections 22159, 22800, 22804, and 90009, Financial Code.