

November 27, 2023

Commissioner Clothilde V. Hewlett
Department of Financial Protection and Innovation
2101 Arena Boulevard
Sacramento, California 95834
regulations@dfpi.ca.gov

RE: PRO 01-21, First Modified Text of Proposed Regulations under the California Consumer Financial Protection Law

Dear Commissioner Hewlett:

Bridge IT, Inc. d/b/a Brigit (“Brigit”) appreciates the opportunity to submit comments to the Department of Financial Protection and Innovation (“DFPI”) regarding the first modified text of its proposed rule governing the registration and regulation of income-based advance (“IBA”) providers under the California Financing Law (“CFL”) and the California Consumer Financial Protection Law (“CCFPL”). Brigit has appreciated DFPI’s willingness to engage in dialogue with Brigit regarding IBA issues.

As stated in Brigit’s May 17, 2023 comment letter to the DFPI’s proposed rulemaking under the CCFPL (“May 17th Comment Letter”), Brigit is part of a new industry of financial technology companies dedicated to providing consumers with additional ways to improve their financial health. Brigit provides its suite of services to millions of members across the United States, with hundreds of thousands of members in California. These financial products are designed to improve a consumer’s financial well-being and include access to (1) non-recourse, instant cash advances (“Advances”), (2) personalized budgeting tools and financial literacy resources, (3) credit builder loans from a bank partner, and (4) credit building tools including access to credit reports, credit monitoring, and identity theft protection. These services enable consumers to access liquidity, save, budget, and build credit. While Advances are a part of Brigit’s offering, they are merely one component of a broader service intended to improve a user’s financial state. Based on the results of a research study conducted with FTI Consulting, 82% of consumers consider IBAs as being important to helping them reach their financial goals¹, and twice as many consumers felt in complete control of their finances after using an IBA relative to prior to using the product.²

In these comments, we discuss Brigit’s concerns about DFPI’s approach to reporting requirements in relation to fees paid by California consumers for bundled services when no IBA has been utilized by the consumer. In short, Brigit is concerned that DFPI’s approach would inaccurately represent the cost of IBAs by attributing costs associated with non-IBA products and services to them. These concerns, Brigit fears, will ultimately lead to unfavorable rules and policies being implemented based off these numbers resulting in undesirable outcomes for both IBA providers and California consumers.

Brigit therefore recommends that DFPI tailor its reporting requirements to transactions involving consumers who have received an IBA during the reporting period.

I. Reporting Fees Without Advances – §§ 1045, subd. (b), (d)(1); 1041, subd. (b).

The proposed rule requires IBA providers to report annually information about subscription fees for those consumers who have not received an IBA. In particular, Section 1045 requires reporting of (1) the

¹ FTI Consulting Research, *Brigit Customer Research*, Question 18 (May 2021) (on file with author)[the “FTI Consulting Report”].

² FTI Consulting Report, Questions 14 and 15.

annual number of California residents who did not receive an IBA but paid a subscription fee, and the total dollar amount of such subscription fees (“Subdivision (b)”); and (2) for each month and quarter, the number of California residents who did not receive an IBA but paid a subscription fee or other charge, and the total dollar amount of all such charges (“Subdivision (d)(1)”). In addition, Subdivision (b) of Section 1041 requires that each registrant provide its gross income for the prior calendar year from subject products, including all subscription fees – charged as part of a bundle of services that includes IBAs – paid to the provider for all periods in which an IBA was provided to a California resident (“Section 1041”). As discussed in turn below, this type of reporting is misleading, and any utility that can be gained from such reporting is present in other reporting requirements.

a. § 1045, subd. (b).

As indicated in our previous comments, Subdivision (b) appears based on the improper assumptions that (i) bundled subscription fees are solely attributable to IBAs and that the value of our additional services are \$0, and (ii) that consumers who have access to IBAs but do not use them receive no benefit.³ Rather, the opposite is indicated. Consumers who pay a subscription fee for bundled services but never utilize the IBA product bundled therein should be presumed to be paying for access to the other services Brigit offers. Even if such a consumer may partly intend to have access to an IBA, there is questionable value in requiring reports of consumers who are offered, but do not receive IBAs, whether the offer is from providers that operate on a subscription model or not.

Accordingly, Subdivision (b) would not provide sufficient information on a consumer’s subjective motivation for subscribing to bundled services. Such data could distort cost valuations if DFPI attempted to use it as a baseline in determining the actual subscription cost attributable to an IBA product within a bundle of services. Indeed, DFPI’s analysis in support of its rulemaking recognized as much in excluding subscription fees from the APR.⁴ Accordingly, Brigit recommends DFPI removes the reporting requirement captured by Subdivision (b) and instead only require reporting regarding consumers who have received at least one IBA in the reporting period.

Furthermore, DFPI already captures sufficient IBA-related information in other provisions of the proposed rule. For example, Subdivision (c) requires that a registrant report granular information regarding California residents who received at least one IBA in the reporting period. These reporting requirements have a closer nexus to the provision of IBAs since the subject consumers have actually obtained IBAs during a reporting period. In contrast, Subdivision (b) reporting includes reporting for those who never receive an advance, which should be out of scope for this rule.

b. § 1045, subd. (d)(1).

In addition, Subdivision (d)(1) is too broad to provide DFPI with insight on the costs associated with IBAs. Here, a “charge” includes “any . . . costs charged, contracted for, or received by a person in connection with the investigating, arranging, negotiating, procuring, guaranteeing, making, servicing, collecting, and enforcing of an income-based advance, or any other service rendered.”⁵

³ See DFPI, *INITIAL STATEMENT OF REASONS (PRO 01-21)*, page 48 (stating this information is necessary to “identify programs where registrants collect subscription fees from substantial numbers of California residents without providing any income-based advances”).

⁴ See DFPI, *2021 Earned Wage Access Data Findings (Cited in ISOR)*, page 7 (“Subscription Fee Structures are also excluded from the analysis section, as it is difficult to include subscription fee costs when making APR calculations.”)

⁵ § 1004(c).

This broad definition expands beyond charges attributable to or received in connection with IBAs, and includes revenue that is wholly separate and unrelated to IBAs, ultimately distorting the reported costs of IBAs. Accordingly, Brigit recommends DFPI limits the definition of “charges” to include only those incurred in connection with IBAs. Further, Brigit recommends Subdivision (d)(1) be limited to only those consumers who have obtained an IBA in the prior calendar year, despite them not obtaining one in an applicable month or quarter.

This recommendation is consistent with reporting charges that are, in fact, related to IBAs, and would still include, for example, those discretionary services provided in connection therewith (e.g., expedited funds fees). It would also ensure that registrants need not submit irrelevant reporting regarding charges paid by consumers who do not receive an IBA during the applicable reporting period.

c. § 1041, subd. (b).

As with those sections identified above, Section 1041 is too broad to provide an accurate representation of the gross income attributable to IBAs. Under this expansive language, so long as one California resident received an IBA, all bundled subscription fees which include an IBA would need to be reported as gross income received from subject products. This would include those subscription fees from individuals who never obtained an IBA, as discussed in Subdivision (b) above.

Accordingly and in line the recommendations made above, Brigit recommends DFPI modify Section 1041 to limit the gross income being reported to include only those bundled subscription fees received from consumers who obtained an IBA in the previous calendar year. This change would more accurately reflect the gross income received from California residents in connection with IBAs.

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Brigit appreciates the opportunity to provide comments on DFPI’s proposal and invites DFPI to contact Brigit with any questions or requests for additional information.

Sincerely,

Hamel Kothari
Chief Technology Officer Bridge IT, Inc. d/b/a Brigit