



February 6, 2024

Ms. Clothilde V. Hewlett
Commissioner, Department of Financial Protection and Innovation
2101 Arena Blvd.
Sacramento, CA 95834
Submitted electronically to regulations@dfpi.ca.gov

Re: PRO-01-21

The undersigned groups – the Center for Responsible Lending and National Consumer Law Center – appreciate the opportunity to comment on the most recent changes to the Department of Financial Protection and Innovation’s (DFPI or Department) Proposed Regulations Under the California Consumer Financial Protection Law and the California Financing Law, California Deferred Deposit Transaction Law, and California Student Loan Servicing Act, PRO 01-21.

While we continue to oppose the Department’s earlier decision to eliminate the requirement that income-based advance providers that register under the California Consumer Financial Protection Law (CCFPL) comply with the cost caps under the California Financing Law (CFL), our comments in this letter address only changes in the most recent draft.

A. DFPI should clarify that the entirety of paragraph (e) of section 1461 expires when the registration requirement expires.

In the most recent draft, DFPI proposes to consolidate former section 1462 into section 1461 by transferring former section 1462’s exemption from licensure to a new paragraph (e) of section 1461. We have no objection to this restructuring of the regulations. However, as the text is currently drafted and formatted, it is potentially unclear whether all of paragraph (e) expires upon the expiration of the registration requirement, or just subpart (2) of paragraph (e). It is unfathomable that the Department would propose that the registration requirement would expire without also sunseting the exemption from CFL licensure, especially in light of DFPI’s conclusion that income-based advances are loans. Thus, it appears that this is an oversight that can easily be clarified. We urge the Department to amend section 1461, paragraph (e) as follows (new language bolded):

(e) A provider of an advance of funds as described in subdivision (a) does not require a license under the California Financing Law if:

(1) The advance of funds is an income-based advance as defined by California Code of Regulations, title 10, section 1004, subdivision (g), and

(2) The provider is registered with the Department to offer income-based advances under California Code of Regulations, title 10, section 1010.

This paragraph (e) shall expire when the registration requirements for income-based advance providers under section 1010 expire.

B. We support DFPI’s revised language in paragraph (e) of section 1461.

Regarding that same section of the new draft text, we commend the Department for its changes to the phrasing of the exemption for CFL licensure. In earlier drafts, the draft text stated that an income-based advance provider that registers with the Department “is not ‘in the business’ of a finance lender for purposes of licensure.” *See* former section 1462. Now, DFPI proposes the simpler rule that a provider that registers “does not require a license under the [CFL].” Section 1461(e). This new language is clearer, more succinct and, most important, more accurate, as providers of income-based advances are clearly “in the business” of offering loans under the CFL, as DFPI itself understands. *See* section 1461(a), (f).

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If further information would be useful, please reach out to Andrew Kushner at or Lauren Saunders at _ .

Yours very truly,

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