



June 21, 2023

**RE:** 3-year funding to create the Department of Financial Protection and Innovation and the associated trailer bill language amending the Corporate Code and Financial Code – **SUPPORT with Amendments**

Dear **Chairs Mitchell and Caballero / Chairs Ting and Cooper:**

California small businesses are facing an epidemic of predatory lending. California small businesses commonly pay effective APRs that are higher than 90%—sometimes as high as 350%—in payday-like cycles of reborrowing, without these rates being disclosed to them.<sup>1</sup> We applaud the inclusion of small business protections in the proposed Department of Financial Protection and Innovation’s (DFPI) mandate. However, without a few clarifications, this mandate will not function as intended to serve small business owners. We respectfully offer the following three recommendations:

**1. Clarify the contradictory definitions of covered small business financing activity**

The bill currently includes small business financing within the authority of the DFPI, but the definition of “covered person” is contradictory with respect to small business financing.<sup>2</sup> As a result, the DFPI would have oversight over a handful of responsible non-bank licensees, leaving the entire high-cost segment of the market free of oversight.

**Policy Recommendation:** Clarify that “covered persons,” defined in 90002(f), includes small business financing “providers” as defined in Division 9.5 22800(m).

**2. Clarify that the DFPI’s small business financing data collection includes products like cash advances**

The bill grants the DFPI the ability to collect data on how minority-owned, women-owned, and small businesses are being served by financing products. The ability of the DFPI to research and understand the market will enable better-informed rulemaking. It will also spur innovation by spotlighting what works in supporting underserved small businesses and where gaps remain. However, the bill text currently refers only to “lending,” leaving out alternative commercial financing products like merchant cash advances.

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<sup>1</sup> <https://www.opportunityfund.org/blog/unaffordable-and-unsustainable-new-opportunity-fund-report/>

<sup>2</sup> The Oversight section in 90007(a) “shall apply to... a covered person” to whom the Dept. provides determines by order is “engaging, or has engaged, in conduct that poses risks to consumers or *small businesses* with regard to the offering or provision of financial products or services.” However, “covered person” is defined in 90002(f) as a provider, affiliate, or service provider of a “*consumer* financial product or service,” with no mention of small business financial products or services.

**Policy Recommendation:** The data collection in section 90006(i)(2) should include the forms of “commercial financing” defined in Division 9.5 2280(d).

### 3. Clarify that the DFPI can enforce Division 9.5 “Commercial Financing Disclosures”

The California State Legislature led the nation by passing the first small business financial protection bill of the modern era with overwhelming bipartisan support in 2018. SB 1235 became the first law in the country to provide basic truth in lending standards for small business financing. Enacted in Division 9.5 of the California Financial Code, we estimate that SB 1235 could save California small businesses \$617 million to \$2.9 billion and stimulate \$665 million to \$5.4 billion in new economic activity throughout the state *annually*—if it is enforced effectively.<sup>3</sup>

However, the Department of Business Oversight does not currently have the power to enforce SB 1235 on all but a few licensed lenders. This trailer bill creates the framework needed to enforce it in the high-cost, unlicensed part of the of the market, but neglected to include Division 9.5.

**Policy Recommendation:** The “Enumerated Laws” that DFPI will enforce, listed in 90002(L), should include Division 9.5 of the California Financial Code so that both the State of California and its small businesses benefit fully from the commercial financing disclosures.

By creating the Department of Financial Protection and Innovation, California is leading the nation in fostering responsible innovation in the market while protecting consumers and small businesses. Our three policy recommendations will help ensure that this vision is achieved. Please do not hesitate to contact us at [info@borrowersbillofrights.org](mailto:info@borrowersbillofrights.org).

Thank you for your consideration.

Sincerely,

1. The Responsible Business Lending Coalition  
Members include: Accion, Community Investment Management, Funding Circle, Lending Club, Opportunity Finance Network, Opportunity Fund, Small Business Majority, StreetShares, The Aspen Institute
2. Bankers Small Business CDC of California
3. The California Association for Micro Enterprise Opportunity
4. California Hispanic Chamber of Commerce
5. CDC Small Business Finance
6. California Association for Micro Enterprise Opportunity
7. El Pajaro Community Development Corporation
8. Fondo Adelante, Mission Economic Development Agency
9. Funding Circle
10. Jefferson Economic Development Institute (JEDI)
11. LendingClub
12. Main Street Launch
13. Multifunding
14. Public Law Center
15. Small Business Majority
16. Working Solutions

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<sup>3</sup> <http://www.borrowersbillofrights.org/sboscouldsavebusinessesannually.html>

Cc: Senators Michell and Caballero / Assemblymembers Ting and Cooper