



July 10, 2020

The Honorable Philip Ting  
 Chair, Assembly Budget Committee  
 California State Capitol  
 Sacramento, CA 95814

The Honorable Jim Cooper  
 Chair, Assembly Budget Subcommittee 4  
 California State Capitol  
 Sacramento, CA 95814

**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 Ting and Cooper:

Small businesses are facing unprecedented challenges. As we emerge from shelter-at-home, Californians will come face-to-face with shuttered storefronts in our neighborhoods, and with our friends and family

who have lost their jobs. The best social service program is a job, and small businesses account for half of California employment. California cannot afford to lose more small businesses.

We are a coalition of nonprofit community development and advocacy organizations, and for-profit fintech and small business lending companies that have come together in support of the Governor's effort to provide small businesses with the protections they so critically need from the proposed Department of Financial Protection and Innovation (DFPI). Above all, these small business protections must not be removed from the trailer bill. Additionally, we are concerned that without a few simple clarifications, this mandate to protect small businesses will not function as intended.

Small business protection is crucial to our economic recovery. For years, California small businesses have faced an epidemic of predatory lending and today, the predatory lending vultures are circling. California small businesses commonly pay effective APRs that can average 90%—sometimes as high as 350%—in payday-like cycles of reborrowing, without these APRs ever being disclosed to them.<sup>1</sup>

Now, small business owners facing desperate situations contend with unsolicited calls and faxes promising fast cash without disclosing the true price. To ensure that small business are able to access capital without abuse or deception, we strongly urge you to maintain the small business protections in the trailer bill and implement the following three clarifications:

**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 90005(f), includes small business financing “providers” as defined in Division 9.5 22800(m). Similarly, clarify that the acts described in 90003(a) apply to “commercial financing” as defined in Division 9.5 2280(d) of the California Financial Code, and the activities described in 90006(a) apply “with respect to covered persons.”

**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 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 can also spur innovation by spotlighting what works in supporting underserved, minority-owned, and women-owned small businesses and where service gaps remain. However, the bill text refers only to “lending,” inadvertently leaving out alternative commercial financing products like merchant cash advances.

---

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

<sup>2</sup> Chapter 90010 states that DFPI's oversight powers “shall apply to... any covered person” including for the purpose of, “[d]etecting and assessing risks to consumers, *small businesses*, and to markets for consumer financial products and services.” Similarly, 90009(e) addresses DFPI's powers with respect “unfair, deceptive, and abusive acts and practices in connection with covered persons to *small businesses*,...” (italics added.) However, “covered person” is defined in 90005(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:** In the data collection section 90009(e), “lending” should be replaced by “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. It is enacted in Division 9.5 of the California Financial Code. We estimate that Division 9.5 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 Division 9.5 on any 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 enforcement powers discussed in section 90011 should include enforcement of Division 9.5 of the California Financial Code, so that the State of California and its small businesses benefit fully from the commercial financing disclosures.

As the California budget grapples with the impact of COVID, the state faces challenging decisions about the scale of government programs. Pulling back the proposed protections for small businesses, at their most vulnerable moment, would expose our communities to great harm. We urge you retain small business protections in the trailer bill, and pass that bill with these three proposed clarifications, so that our communities can recover safely. 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 Opportunity Fund, Community Investment Management, Funding Circle, LendingClub, Opportunity Finance Network, Opportunity Fund, Small Business Majority, StreetShares, and The Aspen Institute
2. Access Plus Capital
3. Accion San Diego
4. Agriculture & Land Based Training Association (ALBA)
5. AmPac Business Capital
6. AnewAmerica Community Corporation
7. Asian Pacific Islander Small Business Program
8. Bankers Small Business CDC of California
9. Bay Area Development Company
10. California Asset Building Coalition
11. The California Association for Micro Enterprise Opportunity (CAMEO)
12. California Capital Financial Development Corporation

---

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

13. California Hispanic Chamber of Commerce
14. California Small Business Development Center (SBDC) - Valley Community
15. CDC Small Business Finance
16. COOK Alliance
17. The CraneWorks
18. Economic Development & Financing Corporation
19. El Pajaro Community Development Corporation
20. Fondo Adelante, Mission Economic Development Agency
21. Fresno Area Hispanic Foundation
22. Funding Circle
23. Halo Business Finance Corp
24. The Greenlining Institute
25. Inclusive Action for the City
26. Inner City Advisors
27. Invest in Women Initiative
28. International Rescue Committee's Center for Economic Opportunity
29. Jefferson Economic Development Institute (JEDI)
30. LendingClub
31. Lighter Capital
32. Main Street Launch
33. Marian Doub Consulting
34. The Marketplace Lending Association  
Members include: LendingClub, Prosper, Funding Circle, Avant, Marlette Funding, Affirm, Common Bond, Upstart, Peer Street, Lending Point, College Ave, SoFi, and YieldStreet
35. Maximum Reach 4 Economic Equity
36. Multifunding
37. Opportunity Fund
38. Prospera Community Development
39. Public Law Center
40. Renaissance Entrepreneurship Center
41. San Francisco African American Chamber of Commerce (SFAACC)
42. Silver Lining
43. Small Business California
44. Small Business Majority
45. Wadeco Business Center
46. Women's Economic Ventures
47. Working Solutions

Cc: Senators Michell and Caballero