



February 8, 2021

CALIFORNIA DFPI WELCOMES COMMENTS ON NEW RULEMAKING AUTHORITY

The newly named California Department of Financial Protection and Innovation ("DFPI") has asked stakeholders to provide comments to help the DFPI development regulations under the California Consumer Financial Protection Law ("CCFPL"). The deadline to submit comments is March 8th.

In the request for comments, the DFPI recited its rulemaking authority under the CCFPL with respect to both consumer and commercial financial products and services. To summarize, the DFPI is authorized to issue rules on the following:

- Establish reasonable procedures to timely respond to consumer's complaints and inquiries regarding a covered person;
- Registration requirements for covered persons engaged in the business of offering or providing a consumer financial product or service and oversight of such persons;
- Identifying unlawful, unfair, deceptive or abusive acts or practices with respect to consumer financial products or services;
- Disclosure rules for consumer financial products or services to help consumers understand the costs, benefits and risks of such products or services;
- Defining unfair, deceptive or abusive acts or practices ("UDAAPs") in offering or providing commercial financing or other products and services to small business recipients, nonprofits and family farms;
- Data collection and reporting on the provision of commercial financing or other products and services to small business recipients, nonprofits and family farms;
- Annual or special reports for covered persons and services providers; and
- California credit cost provisions (including rates and fee caps) applicable to consumer financial products or services.

The DFPI provided specific questions to help guide stakeholders' comments. Stakeholders may provide comments outside of the specific questions and may submit proposed language for regulations. Of particular note, the DFPI asked stakeholders:

1. Whether there are additional financial products or services that the DFPI should, by regulation, bring within the scope of the

CCFPL?

2. What industries should the DFPI prioritize in terms of establishing registration requirements? How should the DFPI oversee such industries?
3. Are there specific acts or practices in the market for consumer financial products or services that stakeholders believe are unlawful, unfair, deceptive or abusive? Should DFPI issue a regulation to define the act or practice as unlawful, unfair, deceptive or abusive?
4. Are there specific acts or practices in the commercial financing market or in the offering and the provision of financial products or services to small business recipients, nonprofits and family farms that are unfair, deceptive or abusive? Should DFPI issue a regulation to define the act or practice as unfair, deceptive or abusive?
5. Should the DFPI issue regulations clarifying the applicability of state credit cost limitations, including rates and fee caps, to consumer financial products and services offered by covered persons?

The CCFPL does not apply to a number of regulated entities, including, but not limited to banks, California-licensed finance lenders and California-licensed finance brokers. Yet future rules may affect exempted entities indirectly by regulating vendors of exempted entities insofar as, for example, UDAAPs are identified. In addition, California's viewpoint on acts or practices that constitute UDAAPs could influence the view of other state and federal regulators with UDAP/UDAAP authority.

The DFPI's invitation to comment highlights the incredible breadth of its new rulemaking authority under the CCFPL. Whether the DFPI will take a measured approach to rulemaking remains to be seen. We will closely monitor developments in California.

✧ *Mike Tomkies and Susan Seaman*

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