

January 31, 2020

Commissioner Manuel P. Alvarez
Department of Business Oversight
1515 K Street
Suite 200
Sacramento, California 95814

RE: Commercial Financing Disclosure – PRO-01-18

Dear Commissioner Alvarez:

On behalf of the Electronic Transactions Association (“ETA”), we appreciate the opportunity to share our thoughts regarding commercial financing disclosures with the California Department of Business Oversight (“DBO” or “Department”). ETA supports transparency in small business financing disclosures, including providing borrowers with the best information to compare costs across products and make informed decisions. ETA supports a competitive marketplace for small business financing with fair, transparent, and readily understandable financing options. Good public policy on this issue dictates that disclosures allow for small businesses to be able to accurately compare total costs across products. This request for comments asks for the economic impact that the proposed regulations would have on stakeholders if implemented. Given a number of factors, as detailed below, it is not possible for us to provide specific data on the economic impact of the proposed regulations at this time.

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services, including financial institutions, transaction processors, payments networks, and others. ETA also has members that are engaged in online lending for commercial enterprises, primarily small businesses, either directly or in partnership with lenders.

ETA and its members support an inclusive financial system that provides high quality, secure, and affordable financial services for the broadest possible set of consumers and small businesses. ETA member companies touch, enrich, and improve the lives of underserved communities while making the global flow of commerce possible. ETA encourages policymakers to support these efforts through policies that support innovation and the use of technology in financial products and services.

Small Business Lending Is Different Than Consumer Lending

It is imperative that policymakers not conflate consumer lending with small business lending. Commercial and consumer credit are distinctly different types of credit. Small business borrowers have different needs and objectives in obtaining credit than consumers – often relying on financing to buy inventory, smooth cashflow, and expand their marketing. Small businesses are the backbone of the economy and providing them with that financing enables them to continue to grow. Small business lenders have developed credit products specifically designed to answer those needs and

objectives. For example, the length of a small business loan is often measured in months rather than years. ETA cautions that an approach that would simply apply existing requirements for consumer lending to small business loans would have detrimental effects for both online small business lenders and the small business community. Particularly, because ETA member small business lenders are providing access to credit to businesses that are traditionally underserved and unable to access financing through more conventional means.

Many of ETA's members provide financing to their customers that average less than \$25,000. Small businesses often are looking for small amounts to get them through a period of time (i.e., to cover payroll or smooth out a bumpy cash flow) or to fund a specific activity (i.e., a new marketing campaign). ETA supports a system that provides small business borrowers with fair, transparent, and readily understandable disclosures that are comparable across products.

The Economic Benefits of Online Lending to Small Businesses and the California Economy

Small businesses are vital for America. However, these businesses routinely lack access to necessary capital to maintain and expand operations. Online small business lending fills this critical gap for small businesses. Indeed, the innovation and affordability of online small business lending products serves to complement, rather than replace, traditional funding sources. Online lenders fund small and short-term loans to business owners very quickly. Access to capital allows small businesses to purchase inventory, cover operational costs, or provide capital to expand. These are all important financing options for small businesses, with a substantial economic impact. In turn, these businesses stimulate additional economic activity and create jobs in their communities.

According to a study conducted by NDP Analytics in 2018 entitled *The Economic Benefits of Online Lending to Small Businesses and the U.S. Economy*, the economic benefits of online lending to California small businesses are substantial.¹

- From 2015 to 2017, five of the top online lenders funded nearly \$10 billion to approximately 180,000 small businesses in urban and rural communities across America. The \$10 billion in loans funded to small businesses between 2015 and 2017 directly generated \$23 billion in sales for the small business borrowers. Those additional sales in turn generated \$37.7 billion in gross output and created 358,911 jobs with \$12.6 billion in wages in the local economies of small business borrowers across the country.
- In California alone, the online lenders participating in the study funded nearly \$1.6 billion to 21,832 small businesses from 2015 to 2017. About one-third of these loans went to small businesses in lower-income communities (those below the median household income). These online loans directly generated \$3.6 billion in sales for small business borrowers in

¹ NDP Analytics, Pham, Triantis, Donovan, *The Economic Benefits of Online Lending to Small Businesses and the U.S. Economy*, May 2018. Available at <https://www.electran.org/osbl/wp-content/uploads/2018-0522-NDP-Online-Small-Business-Lending-Economic-Benefits.pdf> and California specific data at <https://www.electran.org/osbl/wp-content/uploads/2018-0705-NDP-Online-Small-Business-Lending-Economic-Benefits-CA.pdf>.

California. The additional sales of small business borrowers in turn generated over \$6.2 billion in gross output and created 53,302 jobs with \$2.1 billion in wages in the local California economies of small business borrowers.

- For every \$1 in lending to small businesses in California, sales of small businesses increased between \$1.08 and \$2.86 (with an average of \$2.33). Additionally, for every \$1 in lending, the small business borrower's additional sales in turn created between \$2.14 and \$6.00 (with an average of \$3.98) in gross output in the local communities of the borrowers.

Specific Comments

Economic Impact of The Regulations

This invitation for comments requests the economic impact of the proposed regulations if implemented. We find that several factors make providing this information to the Department at this time quite challenging if not impossible. First among those factors is that we do not know what the finalized regulations would look like. Small differences in the regulation's requirements could have an outsized impact on implementation costs and timing. Small differences in the regulation's requirements could also have very different impacts on the variety of financing products available to small business borrowers in California, the number of providers offering such financing products, and the ability of California's small businesses to obtain financing, with the features they desire and within the time they need to continue to purchase inventory, pay employees, and contribute to the success of local California economies. Additionally, because the implementation is going to be significantly different from product to product and entity type to entity type the overall economic impact varies substantially across the industry.

Given that the Department has solicited comments from stakeholders on the proposed regulations but has not yet provided stakeholders with indications about what, if anything, could change from the proposed draft, it is possible that any assessment we could provide would not accurately represent the actual economic impact of the regulations.

In addition to the challenges listed above, the short timeframe (2 weeks) for stakeholders to respond to this invitation for comment makes it nearly impossible to provide substantive feedback on economic impact. Any submissions would likely lack the depth and substance needed to accurately assess real economic impact in this space.

If the goal is ultimately to assess real economic impact of this regulation, ETA recommends that, after the regulations are finalized the Department should allow for another public comment period so that stakeholders can provide substantive feedback based on real world examples and a thorough analysis of the costs and benefits of the final regulations not just to providers and small businesses, but also to the manufacturers, suppliers, and service providers doing business with California's small businesses. At that time, there may be an opportunity to more accurately assess the impact to small business financing providers and the small businesses themselves.

Opportunity for Innovation

Although most parties engaged in this process support fair, transparent and readily understandable disclosures for small business financing, there are many different opinions on the best way to tailor these disclosures. The reason for this is not a rejection of the ultimate goal, but instead a strong sense of disparity amongst the many different product types, features, requirements and expectations of the borrowers. In an effort to help mitigate possible cost and competitive disadvantages of a more ridged system, ETA recommends that the Department consider ways to include in the final regulations a process whereby a provider can request either a variance from the standardized disclosure requirements, or exemption therefrom due to product uniqueness. Such a process would promote innovation in the market, ultimately benefiting small businesses, as it is oftentimes these non-traditional products that offer the most flexible terms for borrowers. Without this, ingenuity and creativity could be stifled by trying to fit the ideas of the future into the confines of the present.

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Thank you for the opportunity to participate in the discussion on this important issue. If you have any additional questions, you can contact me.

Sincerely,



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