

August 13, 2020

The Honorable Manuel P. Alvarez
Commissioner, Department of Business Oversight
1515 K Street, Suite 200
Washington, D.C. 20219

Re: Proposal to Restructure the Department of Business Oversight

Dear Commissioner Alvarez:

The Electronic Transactions Association (“ETA”) appreciates the opportunity to offer comment on the budget proposal to restructure the Department of Business Oversight (DBO) through the California Consumer Financial Protection Law (CCFPL). ETA supports the DBO’s efforts to protect California consumers by designing a regulatory framework that provides structure, supervision, and oversight of currently unregulated entities.

Who We Are

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA’s members include banks, mobile payment service providers, mobile wallet providers and non-bank financial technology companies (“FinTech”) that provide access to credit, primarily to small businesses, either directly or in partnership with other lenders. During 2019 alone, ETA members facilitated over \$22 trillion in payments worldwide. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient, and rewarding payment solutions and lending alternatives.

Comments

ETA members and the payments industry at large have felt enormous impacts from COVID-19, and all our efforts have been focused on safeguarding consumers and small businesses as they struggle through a time of deep financial uncertainty. Our members have advanced many exciting programs to aid in economic recovery and fight fraud during this crisis, and a regulatory restructuring of the scale proposed here – without appropriate refinement of scope and covered persons – risks adding destabilizing effects that could hinder that recovery rather than providing the certainty and security we share as mutual goals of an effective regulatory framework.

The timing of the proposal also resulted in a legislative process not reflective of the consideration, discussion, and transparent hearings that serve such restructurings best. This lack of public vetting only adds to the potential regulatory uncertainty that can contribute to confusion and destabilization. However, by appropriately structuring exemptions for current DBO licensees and

focusing on unregulated entities, the DBO could achieve the laudable goals of protecting California consumers in this tumultuous time without adding new compliance burdens and uncertainty among participants.

Exemptions for Currently Regulated Entities Would Focus DBO Efforts and Alleviate Industry Concerns - Chapter 3. 9002

We would suggest that current DBO licensees should be completely and clearly exempt from the new proposal. The DBO already possesses the authority to add additional criteria to current licensees under those licenses, and there is no discernable reason for an additional layer of regulation under the proposal. We acknowledge and applaud the language amendments expanding exemptions for certain entities, but we recommend some further adjustment that would better encapsulate currently regulated entities:

(c) Nothing in this division shall apply to a federally insured bank, bank holding company, trust company, savings and loan association, savings and loan holding company, or credit union when acting under the authority of a license, certificate, or charter under federal law or the law of a state, except paragraph (a)(1) of section 90003 and the enforcement thereof.

Financial Data Processing Service Providers Should Be Added to Exemptions – Chapter 6. 90006(e)

We suggest that 90006(e) be amended to add a new sub-paragraph as follows:

(2) Financial data processing service providers who do not receive or transmit funds from or to a consumer.

This amendment will ensure that financial data processing service providers who do not receive or transmit funds directly to or from consumers, and are already heavily regulated, will be expressly free from unintended inclusion in another framework of regulatory requirements.

Alternatively, Section 90005(k)(7) could be amended to include the following or similar language to achieve the same result:

In addition, a person who does not receive or transmit funds to or from a consumer shall not be deemed a covered person with respect to financial data processing.

Commercial Financial Products Should be Expressly Exempt

While the clear purpose of the CCFPL is to protect consumers and provide a regulatory framework for certain consumer financial products, there is currently no express exemption from the proposal for commercial financial products. Inclusion of such an express exemption would provide clarity for the industry and further refine the scope of the proposal by removing any ambiguity.

The Rulemaking Process Should be Clearly Defined and Allow for Public Comment

We recommend the department adopt a formal, defined rulemaking process within the CCFPL that establishes a statutory standard to be considered by the department when enacting rules. While the requirements and obligations imposed by the proposal are expansive, there is a perceived lack of transparency, oversight, or opportunity for stakeholder input on subsequent rulemaking.

Regulatory frameworks function best when the principles governing a rulemaking process are well-defined and accessible, empowering input from the public and covered persons while providing the department with valuable feedback.

We encourage the department to continue and reinforce its reputation as a collaborative body engaging substantively with the public and industry as it undergoes this transformative process.

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We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any aspect of our comments, please contact me or ETA Senior Vice President, Scott Talbott at Stalbott@electran.org.

Respectfully Submitted,



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CC: Melissa Immel, Office of Governor Newsom
Members, Assembly & Senate Budget Committees
Members, Assembly Banking & Finance Committee
Members, Senate Banking & Financial Institutions Committee