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VIA E-MAIL

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State of California
Department of Financial Protection and Innovation
1515 K Street, Suite 200
Sacramento, CA 95814-4052

Attention: Commissioner Manuel P. Alvarez
Email: regulations@dbo.ca.gov

cc: Bret Ladine
Email: bret.ladine@dbo.ca.gov

STATE OF CALIFORNIA
DEPARTMENT OF BUSINESS OVERSIGHT CALIFORNIA CODE OF REGULATIONS TITLE 10, CHAPTER 3

Equipment Leasing and Finance Association Comments on Proposed Regulations

Scott Riehl
Vice President, State Government Relations
Equipment Leasing and Finance Association

Dear Mr. Alvarez:

On behalf of the Equipment Leasing and Finance Association ("ELFA"), please find below our further comments on the most recent draft of the proposed Regulations relating to SB 1235. We appreciate the opportunity to provide comments to the new DFPI concerning these regulations, and look forward to continuing the productive dialogue on matters that we believe will add clarity, result in better disclosures to equipment finance and leasing customers, and facilitate more uniform disclosures across the equipment finance and leasing industry. We appreciate very much your consideration of our prior input and hope you find these comments helpful as well.

General.

Compliance with Truth-in-Lending Act. We ask you to consider that if the Truth-in-Lending Act has provisions regarding a financial product within the scope of the California laws and regulations (such as closed-end credit), then compliance with TILA's provisions will be sufficient in lieu of compliance with California law. Thus, companies that already comply with TILA's closed-end credit provisions for consumers, can extend those same disclosures (in content and format) to non-consumers in a much more seamless manner and with less disruption or error.

Accrued Interest. There are references throughout the Regulations excluding from "finance charges" "interest accrued since the recipient's last payment". This is too limited. The recipient's last payment may be a partial payment or may occur after one or more prior missed payments with respect to which interest has accrued but remains unpaid. There may also be other overdue payment obligations that the recipient has under the financing documents or payments made by the financer that the recipient failed to make in breach of the agreement that have accrued and unpaid interest. We therefore believe that these references should be changed to "accrued and unpaid interest" and not limited to just accrued interest since the recipient's last payment.

§ 2057. Definitions.

Definitions of "Approved advance limit" and "Approved credit limit". The definitions include a change that we believe provide less clarity than in the 2019 draft. The change of "maximum advance a recipient can receive" to "the maximum advance that a provider is required to pay" does not take into account that many approvals contemplate multiple advances including in closed credit and lease financings and that these advances may be discretionary or subject to conditions precedent. For example, a maximum $1,000,000 lease credit approval is often disbursed in multiple advances based on the customer's delivery schedule, receipt of acceptable equipment and documentation, and there not being any event of default at the time of the advance. The "can receive" language accommodated that, but the "required to pay" language may not, so we request that the language revert to the "can receive" in the prior draft and that these definitions apply to all financial products.

Definition of "At the time of extending a specific commercial financing offer". We believe that the definition in the prior draft stating that this was tied to the time that the final offer was made is a better definition. As it is worded now it could be construed to mean that a full disclosure would need to be made every time any communication is made to the customer relating to amount, rate or price even in

preliminary negotiations prior to an approval and communication of agreed final terms. This would be extremely burdensome to the provider and confusing to the recipients. This also seems to conflict with the more reasonable approach in § 2070, Signatures, which says that the disclosures are to be obtained prior to consummation of the transaction. This makes much more sense since the disclosure will be based on the actual final agreed terms between the parties. For "comparison shopping" purposes we believe that the recipient will be most interested in comparing the final offers of competing providers in choosing a provider.

Also, in contrast to the prior draft, a separate disclosure is now required not only when there is a change in finance charge or APR but also when there is a change in payments or terms. This again is administratively burdensome to the provider and confusing to the recipient as it seems to require a new disclosure any time that the provider, at the customer's request, waives a payment default or grants an extension for payment or of the term to accommodate the recipient's needs. We don't see how this conforms with the intent of the statute to provide for "comparison shopping" or further useful information when the recipient has already incurred the obligation and the provider is accommodating a recipient request.

Definition of "Depository Institution". We continue to believe that this definition (which was dropped in the most recent revision) should include Depository subsidiaries and affiliates subject to federal regulation.

Definition of "irregular payments". We request clarification of what is intended to be covered in this new definition (which also need to be included in disclosures). Could the Regulations include examples? Is this intended to include charges unrelated to the financing such as payments made for property taxes, maintenance, insurance discharge of liens? if so, why?

Definition of "person who is presented with a specific commercial financing offer and of "recipient". The Regulations do not provide adequate guidance about what relationship a recipient must have to California in order to trigger the disclosure requirements. We believe that the Regulations would provide better guidance if recipients were defined to be persons having legal residence in California or entities having their principal place of business in California.

Definition of "Average". What is the intent/impact of the new subsection (b) statement that "average"

refers to “mean”? Our understanding is that these terms are synonymous.

§ 2060. General Formatting and Content Requirements.

Subsection (a)(3). Expressing the term in years and months with partial months expressed as a decimal is not a market standard. Is there an issue with expressing terms in months e.g., instead of “4 years, 6 months”, using 54 months? For at least some providers, this will be more consistent with documents and systems used to prepare the disclosure forms.

Subsection (a)(4). There are two additional commonly used methods for calculating interest rates in addition to 30/36. These are Actual/365 and Actual/360. We suggest that any of these 3 methods may be used as long as the method is disclosed. For financings under $500,000, the difference in interest rate is actually negligible and should be less than the 10 basis points set forth in subsection (a)(5).

§ 2066. Formatting and Content Requirements for Lease Financing.

Subsection (a)(8) and (9). Disclosure must include “finance charges other than interest accrued” since the recipient’s last payment” [which per our comment above should just be “accrued interest”] and also “prepayment charges”. Could the Regulations include examples or what kinds of charges would fall into each category?

§ 2071. Thresholds for Disclosure. This section provides for use of approved credit limits/approved advance limits for open-end credit plans, asset-based loans, and factoring transactions, but not for lease transactions. However, as noted above, both closed-end loans and leases often have approved credit limits although advances may be made over time as equipment is delivered to and accepted by the recipient. For example, a lease credit limit approval may be for $1,000,000 for 5 $200,000 items to be delivered over a 6-month period with 5 separate $200,000 advances. The $1,000,000 represents the “net cost to the financer to acquire the property to be leased” but we request clarification that, as with open-end credit plans, asset-based loans and factoring transactions, the aggregate cost of the equipment subject to the credit approval is used to determine whether the lease financing or loan exceeds $500,000.

There is also a requirement that there be a separate writing prior to execution of transaction docs that

the parties reasonably expect more than $500,000 to be outstanding at some point. If, in fact, the provider can demonstrate that more than $500,000 is outstanding at some point, we suggest that this be included in the Regulations as a satisfactory alternative to requirement of a separate writing.

We appreciate the continued opportunity to provide guidance and now **ELFA's** input on the proposed regulations as we have throughout the legislative process and look forward to discussing these matters with you. If you have further questions, please do not hesitate to contact us.

Respectfully,

/s/ Scott Riehl

Scott Riehl
Vice President
State Government Relations
Equipment Leasing and Finance Association