



EQUIPMENT LEASING AND FINANCE ASSOCIATION
1625 Eye Street NW P 202.238.3400
Suite 850 F 202.238.3401
Washington, DC 20006 www.elfaonline.org

VIA E-MAIL

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State of California
Department of Business Oversight
1515 K Street, Suite 200
Sacramento, CA 95814-4052

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

cc: Charles Carriere
Email: charles.carriere@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 comments on various aspects of the proposed Regulations relating to SB 1235. We appreciate the opportunity to provide comments to the DBO 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.

§ 2057. Definitions. [Financial Code §22800]

1. Approved Credit Limit. ELFA requests that the definition of “Approved credit limit” be expanded so that it can be used for commercial financing transactions generally, including lease financing and closed-ended loan products. Providers such as equipment lessors and finance companies often approve a maximum advance amount, but the advances will be made over time to fit the recipient’s desired schedule as the goods are delivered to and accepted by the recipient. For example, the provider may approve a \$600,000 lease line of credit that is used by the recipient to purchase 10 separate items that are then subject to 10 separate leases or loans with different commencement and termination dates and payments based on the cost of the equipment financed with each advance. Since the approved credit limit is \$600,000, the provider should not be subject to the disclosure requirements. Separate leases or loans may also result from the recipient’s request to allocate the approval into separate transactions because of the allocation of equipment to different parts of the recipient’s business or where the aggregate approved amount will be syndicated among multiple lenders or lessors by assignments.

2. Approved Credit Limit. ELFA also requests clarification that if a provider has issued multiple approvals to a recipient that are outstanding at the same time, the approvals may be aggregated for purposes of determining whether the approved credit limit meets under the \$500,000 threshold.

3. Commercial open-end credit plan. ELFA requests clarification that this term includes revolving lines of credit, warehouse lines of credit and revolving inventory floor plan loans.

4. Depository Institution. ELFA requests that this definition include wholly-owned subsidiaries and affiliates of a depository institution that are subject to federal banking regulations and supervision. This is consistent with prior DBO practice and interpretive opinions (see, for example, DBO interpretive Opinion dated April 27, 2016) and with the policy rationale for excluding these affiliates and subsidiaries under Division 9 as they are also operating under the applicable federal or state authority regulating the parent or affiliated bank.

5. Provider. ELFA requests a clarification that a “provider” does not include an assignee of a provider. For example, if a provider that is exempt from disclosure requirements makes the offer of commercial financing to a recipient, no disclosures would be required if that exempt provider subsequently assigns

the transaction based on that offer to an assignee that is not exempt since the disclosures only apply when the initial offer is made. Likewise, if an exempt entity is an assignee of a non-exempt entity that did not comply with disclosure requirements, while there may be penalties assessed for non-compliance by the original non-exempt provider, the assignee would not be responsible for non-disclosure and the validity of the transaction in the hands of an innocent unaffiliated assignee would not be affected. Without such clarity, we believe there will be a negative impact as syndication parties will be resistant to participate in these transactions which will reduce the availability of equipment financing for customers in California. Resolving these questions will therefore enhance the availability of credit to recipients in the California commercial finance marketplace

6. Recipient. ELFA requests further clarity on who is a “recipient” for purposes of disclosure. ELFA proposes that the definition specify that a recipient is a legal entity organized under the laws of the state of California or having its principal place of business in California or an individual or sole proprietor that is a legal resident of the state of California in each case where the commercial financing is in California.

Financial Code § 22801

Commercial Financing Transactions Secured by Real Property. The proposed regulations do not currently provide guidance on this exemption found in § 22801(c). ELFA requests clarification that this exemption would include fixture financing and transactions that include both real and personal property that are secured by real property. Fixtures are real property under California law, so ELFA just seeks to confirm that fixture financings would not be subject to disclosures. Many financing transactions are mixed, for example, where the provider is financing for a manufacturing plant or a farm, including the machinery or equipment to be located or installed on the real property and the financing is secured by both the real and personal property.

§ 2061 Closed-End Transaction Formatting and Content Requirements [Financial Code § 22803]

1. Use of Examples. ELFA requests an additional provision that would permit the use of examples for closed end transactions and leasing so that a single disclosure could be provided as required when the commercial financing offer is made without the need for additional disclosures each time an advance is made. (Currently the proposed regulations only permit this under § 22803 with respect to

factoring or asset-based lending.) As noted above in the ELFA's request relating to "approved credit limit," equipment leasing and finance providers often approve a maximum advance amount, but the advances will be made over time to fit the recipient's desired schedule as the goods are delivered to and accepted by the recipient. After the initial lease and loan documentation is completed (such as a master lease or loan agreement), recipients appreciate a streamlined and efficient advance process that involves limited additional documentation for each advance, so a single up-front disclosure based on an example would provide the necessary information. Also, many closed end and leasing products involve variable interest rates and may include variable payments based on the seasonality of the recipient's business or the recipient's variable use of the equipment (e.g., copier rents based on "cost per copy", vehicle payments based on mileage, machinery payments based on hours of use, etc.). In these situations, an example would be the only way to provide a disclosure to the customer.

2. Average Monthly Cost. § 2061(j) ELFA requests clarification on the term "Average Monthly Cost." Is this intended to convert payment periods that are not monthly?

§ 2066. Formatting and Content Requirements for Lease Financing.

1. Use of Examples. As noted above in our comment to § 2061, ELFA requests an additional provision that would permit the use of examples for closed end transactions and lease financing so that a single disclosure could be provided as required when the commercial financing offer is made without the need for additional disclosures each time an advance is made. (Currently the proposed regulations only permit this under § 22803 with respect to factoring or asset based lending.) As noted above in ELFA's request relating to "approved credit limit," equipment leasing and finance providers often approve a maximum advance amount, but the advances will be made over time to fit the recipient's desired schedule as the goods are delivered to and accepted by the recipient. After the initial lease and loan documentation is completed (such as a master lease or loan agreement), recipients appreciate a streamlined and efficient advance process that involves limited additional documentation for each advance, so a single up-front disclosure based on an example would provide the necessary information. Also, many closed end and leasing products involve variable interest rates and may include variable payments based on the seasonality of the recipient's business or the recipient's variable use of the equipment (e.g., copier rents based on "cost per copy," vehicle payments based on mileage, machinery payments based on hours of use etc.). In these situations, an example would be the only way to provide a disclosure to the customer.

2. Amount of Funds Provided. With respect to the “Amount of Funds Provided,” ELFA requests a clarification that “finance company” in § 2066(b)2.b. also includes manufacturers and suppliers of goods (“vendors”) that enter into lease transactions with their customers as recipients. If a lease originates with a vendor, there may be no stated purchase price and no funds advanced, because the lease provides for periodic rental payments over the stated term and conveyance of the equipment at the end of the term for no or nominal additional consideration.

3. Variable Interest Rates. Lease financings may also include periodic payments based on adjustable rates so ELFA proposes to include adjustable rate provisions in § 2066 similar to those already in § 2061(c), (d), (e).

§ 2070. Signatures.

As currently worded, this section permits electronic signatures “[i]f a commercial financing transaction is being consummated via the internet.” However, transactions are also commonly closed via transmission of documents bearing signatures, including electronic signatures, by telefax and email, so ELFA would propose that signatures may be affixed and transmitted on disclosure documents by any method that is recognized as acceptable under California law for contracts generally. This quoted portion should be deleted.

§ 2071. Thresholds for Disclosure

1. Approved Credit Limit. Consistent with prior comments, ELFA proposes that “approved credit limit” be used in closed end and lease financing transactions, as well as open end credit plans and asset based lending transactions.

2. Separate “Reasonably Expected” Writing. ELFA assumes that this requirement found in § 2071 (a)2.iii. and 3.iii. is to prevent the use of credit approvals in excess of \$500,000 to escape disclosure requirements when the parties do not expect that an amount in excess of \$500,000 will ever be outstanding. However, the best evidence of the intent of the parties would be the actual advance of amounts in excess of \$500,000 which would obviate the need for this separate writing. Therefore, ELFA proposes that a separate “reasonable expectation” writing would not be required where the

provider furnishes proof of outstanding advances in excess of \$500,000 at some point during the term.

Economic Impact Assessment.

Does the DBO intend to prepare an economic impact assessment as required under Cal. Gov. Code 11346.3? The ELFA understands that State agencies proposing to adopt “major regulations” (defined as regulations with an impact exceeding \$50M) must submit a standardized regulatory impact analysis to the Department of Finance. The Department of Finance has a set of regulations that determine how these analyses should be carried out. Once the Department of Finance reviews the analysis, the state agency will then summarize the results and include any of the Department of Finance’s comments. See Department of Finance’s website discussion at

http://www.dof.ca.gov/Forecasting/Economics/Major_Regulations/

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,

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