



EQUIPMENT LEASING AND FINANCE ASSOCIATION

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November 14, 2016

**Public Comment
Equipment Leasing & Finance Association
Proposed 23 NYCRR 500**

The Equipment Leasing and Finance Association (ELFA) represents financial services companies and manufacturers in the commercial equipment lease finance sector. ELFA members collectively provide commercial lease financing in all 50 states, which requires adherence to a complex web of federal and state regulation. To date, federal and state regulators have issued overlapping and inconsistent guidance about cybersecurity best practices. Against this regulatory backdrop, ELFA submits these comments to urge the New York Department of Financial Services (NYDFS) to reconsider the cybersecurity requirements in proposed Part 500 of Title 23 of the Official Compilation of Codes, Rules, and Regulations of the State of New York.

NYDFS' proposed requirements fail to account for the varying sizes, resources, and types of financial services companies operating in New York or for their mix of regulators, risks, and existing investments in cybersecurity readiness. These regulations set rigid minimum standards which, in some cases, exceed existing regulatory guidance and industry practices. For example, the proposed enhanced multifactor authentication and encryption requirements far exceed current industry standards. Retrofitting existing information systems to comply with these requirements will require significant investments in time, staffing, and other resources. Further, extending these and other new requirements to third party service providers will be time and resource intensive because these providers also vary in size, resources, and other capabilities.

NYDFS would better serve New York consumers and markets by modeling this proposal on more flexible standards, such as the National Institute of Standards and Technology (NIST) Cybersecurity Framework or the Federal Financial Institution Examination Counsel (FFEIC) IT Handbook. Many financial services companies are already familiar with and implement standards from the NIST Framework and/or the FFEIC Handbook. Further, other regulators use FFIEC's Cybersecurity Assessment Tool to assess financial services companies' cybersecurity risk profile and maturity. NYDFS should leverage and align with these standards rather than impose a new and inconsistent set of minimum requirements.

NYDFS' one-size-fits-all cybersecurity prescription further imposes an unrealistically short timeline to compliance by ignoring important differences about each company's organizational structure and operational realities. Companies must comply with most of the requirements by June 30, 2017. Many of these requirements will require extensive analysis, investment, staffing, building, and testing to ensure effective implementation. As drafted, the proposal does not describe penalties for non-compliance, which leaves uncertainty for companies who may not be able to guarantee timely compliance with these requirements.

ELFA shares NYDFS' concerns about cybersecurity. ELFA members are committed to investing in the resources and infrastructure necessary to protect their business and customers against the evolving risks of cyber threats. As drafted, NYDFS' regulations will inevitably trigger a wave of enforcement actions against companies who are unable to secure the necessary resources to comply within an unrealistically short timeline. We ask that NYDFS work with ELFA and its members to implement a more practical and effective set of cybersecurity standards to protect our customers and markets.

ELFA members provide commercial lease financing nationally which requires adherence to a complex web of state regulations that lack consistency across state lines. The expense of staff and technology resources required to keep pace with these divergent mandates escalates as one state outmaneuvers another in a perpetual search for flawless solutions to security issues without sufficient attention to sound public policy that is rational within the context of what can be achieved.

This disconnect from what is feasible is evident in proposed requirements involving authentication and all nonpublic information be encrypted. Multi-Factor Authentication outlined in the proposed regulations specifies verification by at least two of three options that force choices between dedicating resources to compliance or to providing financing to businesses seeking capital. Classifying most data as "nonpublic" information requiring encryption by the largest institution to the smallest provider of commercial finance is further instance of exceeding what can reasonably be attained by those subject to the proposed regulation.

The scope of responsibility placed on providers of commercial lease finance would even extend beyond the confines of their operations to oversight of vendors with whom they partner in providing capital to businesses throughout New York. Making ELFA members responsible for errant "representations and warranties" communicated by a vendor outside of our knowledge or capability to pre-empt disregards realities of commerce. Finance sources of all sizes would be challenged by the outlay needed to acquire resources needed for compliance by others not within their control.

We share concerns of the Superintendent of Financial Services that prompted these proposals and emphasize Equipment Leasing and Finance Association (ELFA) members safeguard against unauthorized efforts by outside entities to gain proprietary information. However, issuance of regulations wherein the likelihood of compliance is improbable will trigger enforcement actions against those unable to secure the personnel and capital resources needed. We ask that these proposals be pulled back for revisions that reflect what is practical and attainable.

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