



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**

April 26, 2021

State of California  
Commissioner of Financial Protection and Innovation  
Attn: Sandra Sandoval, Regulations Coordinator  
300 South Spring Street, 15<sup>th</sup> floor  
Los Angeles, CA 90013

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

Cc: Jesse Mattson  
Email: jesse.mattson@dfpi.ca.gov

Cc: Charles Carriere  
Email: charles.carriere@dbo.ca.gov

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STATE OF CALIFORNIA  
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
CALIFORNIA CODE OF REGULATIONS TITLE 10, CHAPTER 3  
REVISED TEXT FOR ITS PROPOSED COMMERCIAL FINANCING DISCLOSURE  
REGULATIONS (PRO 01/18 - SB 1235).

**Equipment Leasing and Finance Association Comments on revised text**

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

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Dear Mr. Alvarez:

On behalf of the Equipment Leasing and Finance Association (“ELFA”), please find below our further comments on the most recent revised text draft of the proposed Regulations relating to SB 1235. We appreciate the opportunity to provide comments to the DFPI concerning these text revisions 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.

We have general and specific comments.

**General.**

First due to the substantial administrative and operational issues and costs (particularly to small business providers) involved in interpreting and implementing the disclosure requirements, we request confirmation that providers will not be required to comply with the disclosure requirements until at least 180 days after final regulations have been adopted and have become effective.

Secondly, we request that the Department revise and post template disclosure forms compliant with the new law and final regulations.

As revised, we believe certain language (highlighted below) goes far beyond the clear language and intent of the of the statute, and in doing so far exceeds the disclosure requirements found even in the consumer loan context.

As revised a lender must now spend significant time and resources even before the loan is documented in making the separate disclosures. The revisions now appear to create a second document to be provided to the customer pre loan approval and documentation.

ELFA fears contrary to the sponsors stated intent, due to these revisions lenders will not want to go through this process given the time and cost involved but if they choose to do so, the cost and time will be passed on to the borrowers in some fashion resulting in higher rates or costs.

Our specific comments follow.

**§ 2057. Definitions.**

§2507(a)(4)(B). The new clause in §2507(a)(4)(B) would require, pursuant to Section 22802 a fully compliant disclosure “[w]ithin one business day of any time a specific periodic payment or irregular payment amount, rate or price, in connection with a commercial financing, is verbally quoted to a recipient . . . .”

We believe that this goes far beyond the clear language and intent of the of the statute that triggers the obligation to “disclose all of the information required in subdivision (b) or in Section 22803 at the time of extending a specific commercial financing offer to that recipient.” This even far exceeds the disclosure requirements in a consumer loan context (see, for example, the disclosure requirements in Regulation Z (12 CFR 1026.5) <https://www.consumerfinance.gov/rules-policy/regulations/1026/5/>), and, in most cases will be impossible to comply with and would just bury the recipient in paper having little relevance to an informed decision to enter into the commercial financing. A “verbal quote” of a payment amount or a rate, or a price is simply not a specific commercial financing offer as it lacks all of the other elements required to be disclosed and would typically be conveyed in the back and forth of negotiations between provider and recipient that ultimately result in an offer which, if accepted could lead to a binding contract. The disclosure itself requires all of the required information to be provided and that simply cannot be done when only one or some of the elements that will eventually become the “specific Commercial financing offer” are being discussed. We believe that the disclosure should apply, consistent with § 2070, “prior to consummating a commercial financing” and that the new clause (B) and related language in clause (D) should be deleted.

The requirement that multiple disclosures be issued each time there is a verbal quote during discussions preliminary to a specific commercial finance offer also significantly increases internal costs of the provider which increases the cost of financing to recipients.

§2507(a)(4)(D). We also believe that the new requirement in §2507(a)(4)(D) that would require a separate disclosure “in connection with each draw” is unnecessary and administratively burdensome because if the rate or price varies based on the retailer or supplier, or the products or services purchased, this can be disclosed in the initial disclosure relating to the facility as a whole. We believe this subsection should be deleted.

§2507(a)(5). In light of the imminent replacement of LIBOR based interest rates by SOFR, we suggest that “Benchmark rate” be amended to include a specific reference to SOFR as an acceptable benchmark rate.

General. For ease of reference, we request that the subsections be ordered alphabetically by

defined term.

**§ 2066(a)(5)(B) and (C).**

Clause (C) appears to be wholly redundant of clause (B) so we request that it be deleted.

**§ 2061 through 2068.**

In these sections there are a number of references to “. . . if the amount financed is less than the funds available to the recipient. . . .” We believe that the Regulations mean to say “if the amount financed is greater than the funds available to the recipient”. [emphasis added]

**§ 3027.**

We request that this section be deleted. This additional disclosure requirement is not within the scope of the legislation as set forth in § 22802, nor does it fall within the scope of regulations authorized in § 22804 which are limited to the disclosure items referenced in Sections 22802 and 22803 and appropriate methods of calculation. Again, this presents a significant additional administrative burden to providers and the information required to be disclosed is often not known at the time that the specific commercial finance offer is extended. For example, it is common for the recipient/borrower to identify the amount of deductions and the names of persons or entities receiving payments only after the offer has been extended and transaction documentation executed (such as the names of specific vendors of equipment or service providers, installers, delivery companies, appraisers, etc.).

We appreciate the continued opportunity to provide guidance and now **ELFA's** input on the revised 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