

January 22, 2019

Department of Business Oversight, Legal Division  
Attn: Mark Dyer, Regulations Coordinator  
1515 K Street, Suite 200  
Sacramento, California 95814-4052

**Re: PRO 01-18 — Commercial financing disclosures**

Dear Mr. Dyer:

On behalf of the American Financial Services Association (“AFSA”),<sup>1</sup> thank you for the opportunity to provide comments on the Department of Business Oversight’s (“DBO”) proposed rulemaking for commercial financing disclosures (PRO-01-18). We appreciate DBO’s efforts to clarify the requirements for providers offering commercial financing. Though AFSA members primarily offer consumer credit, our members also provide financing to commercial entities. In particular, AFSA members are regularly engaged with California’s automobile dealers to provide them with the financial services necessary to enable these dealers to acquire their inventories of vehicles—known as “floorplan” lending—and other similar lines of credit.

**Definitions**

*Lease financing*

SB 1235’s Section 22800(j)(1) states that, to qualify as *lease financing*, a lease must include a purchase option that creates a security interest in the leased goods under 1201 and 1203 of the Commercial Code. 1203(c)(7) of the Commercial Code states that for a motor vehicle, a lease does not create a security interest merely because the amount of rental payments may be increased or decreased by reference to the amount realized by the lessor upon sale or disposition. This is also known as a terminal rental adjustment clause, or “TRAC clause.” Because a large number of commercial motor vehicle leases include TRAC clauses, we would request clarification that a TRAC clause (as described in 1203) does not constitute a “purchase option” as described in 22800(j)(1).

*Specific offer of commercial financing*

The definition of *provider* is “a person who extends a specific offer of commercial financing,” but *specific offer of commercial financing* is not a commonly used phrase and is never defined in the legislation, leaving confusion as to when a specific offer of commercial financing has occurred. Defining this term would add significant clarity to who is a *provider* and covered by the disclosure requirements. We suggest that a specific offer of commercial financing be defined as occurring at the time of contracting, including the time of any initial master credit line agreement.

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<sup>1</sup> Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

## Excluded Transactions

Section 22801 of SB 1235 excludes certain transactions from the bill's requirements. Section 22801(c) specifically covers:

A commercial financing transaction in which the recipient is a dealer, as defined by Section 285 of the Vehicle Code, or an affiliate of such a dealer, or a vehicle rental company, or an affiliate of such a company, pursuant to a specific commercial financing offer or commercial open-end credit plan of at least fifty thousand dollars (\$50,000), including any commercial loan made pursuant to such a commercial financing transaction.

We request that the DBO include language in the regulations that reiterates that the fifty thousand dollar threshold refers to the size of the total credit line

Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 202-469-3181 or [mkownacki@afsamail.org](mailto:mkownacki@afsamail.org).

Sincerely,



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