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Subject: ELFA Meets With California Officials To Discuss Lenders License Concerns

A delegation of Equipment Leasing and Finance Association ("ELFA") members and staff met with California public policy officials in Sacramento on Thursday, October 13. This dialogue was a continuation of ELFA advocacy that began last year as the State Legislature considered new Finance Lenders License legislation, [Senate Bill 197](#).

The following summary distributed to ELFA members is neither a review of every issue or a statement of all ELFA member concerns nor an official policy report by California with respect to the California Finance Lenders License and corresponding provisions applicable to brokers, but it should facilitate inquiries from segments of industry seeking to determine compliance that fits their individual circumstances.

Issues Discussed

The following is the takeaway of ELFA members from discussions in Sacramento and does not represent an official statement by California officials. Much attention was given the many questions arising from enactment of new legislation, Senate Bill 197 codified in Financial Code §22602, et. seq., which, roughly summarized, allows a California Finance Lenders License (CFLL) licensed lender to use unlicensed brokers to get business under specific circumstances.

This new law renewed ELFA members' focus on the regulations that determine when the CFLL applies and when it does not. California authorities did not initially understand why this has become such a big issue because Code of Regulations 1451 had prohibited doing business at all with unlicensed persons and they saw Senate Bill 197 as loosening the regulation for the benefit of licensees.

They pointed to Financial Code section 22154 (a) in commenting that lenders as well as brokers may conduct business outside the scope of the CFLL with exempt entities with the consent and authorization. The requirement in section 22154(a) is only applicable to loans of less than \$5,000 or consumer lending. Therefore, if the lender or broker is not

engaged in these types of lending, it need not obtain written approval from the Department of Business Oversight ("Department") to engage in other business activity at a licensed location (Fin. Code, § 22550). However, every licensee must still disclose the activity to the Department in item 8 of the application, and must also ensure the information on the application remains current by notifying the Department of changes. Before conducting an examination of a licensee, the Department's examiners review a licensee's application, including reviewing the other business activities conducted at a licensed location. Therefore, a licensee will want to ensure that all "other business activity," including brokering to depository institutions and other unlicensed entities, is documented in the Department's records.

If the lender is *not* exempt—generally a non-bank equipment finance company -- the loan broker is not exempt either and needs its own license too, except when Senate Bill 197 exceptions apply.

Members of the ELFA delegation correspondingly referenced internal language inconsistencies among provisions in the new statute, and also the text at the end of the CFLL application form suggesting an exempt broker and entities may not offer loans free of CFLL regulation even though they are by definition outside the scope of CFLL regulation. The statement in the form should be read in the context of the authority under the CFLL. Under the authority of the CFLL, loans may not be brokered to anyone other than licensed lenders. However, loans may be brokered to exempt or excluded entities provided that licensees are not in violation of other laws (specifically, the Real Estate Law) when engaged in this activity. For loans brokered to non-CFLL entities, licensees should ensure that their paperwork does not represent that the loan is being made under the authority of the CFLL.

Further, a CFL-licensed broker must notify the Department and obtain the consent of the Department if the licensed broker intends to engage in business that is beyond the lending and brokering activity that falls under the jurisdiction of the Finance Lenders Law. Therefore, a licensed CFL broker must notify the Department if it will be engaging in the business of brokering loans to non-CFL licensees, such as banks and other exempt institutions, and obtain the consent of the Department. If the CFL-licensed broker intends to broker real estate loans to non-CFL licensees, the Department would want confirmation that the broker has a license from the Bureau of Real Estate to engage in this activity.

The dialogue also focused on Section 8 of the Application to become a finance lender or broker being the place to declare intent of the applicant to do business with banks and other organizations which are exempt lenders and describe the business that the applicant will carry out. Any party wishing to learn the status of their Application should call [866-275-2677](tel:866-275-2677).

If subsequent to licensing the licensee wants to conduct other activity at the licensed place of business, the licensee can submit a letter directed to the attention of Patricia Speight, Special Administrator, requesting approval to conduct the other activity. A licensee must keep the application updated with accurate information about other business, but Financial Code section 22154, subdivision (a) does not apply to a commercial lender making loans of \$5,000 or more. In practice, the broker will still have to update the Department about other business activities, and may submit the information to Patricia Speight. However, the licensee need not wait to obtain written approval to engage in the activity. The letter sent by the licensee should include a detailed description of the type of activity they intend to conduct and an explanation that they will comply with applicable laws. Also, the records would need to be maintained separately. Address this information to **Patricia Speight, Special Administrator, CFL, 320 W. 4th Street, Suite 750, Los Angeles, CA 90013**

A lender may be exempt if the lender makes 5 or less loans that are incidental to their business of lender. Incidental was described as something that the lender does not ordinarily do in its business.

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