

April 23, 2021

Commissioner of Financial Protection and Innovation  
Attn: Sandra Sandoval, Regulations Coordinator  
300 South Spring Street, 15th Floor  
Los Angeles, CA 90013

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

Dear Ms. Sandoval:

On behalf of the American Financial Services Association (“AFSA”),<sup>1</sup> thank you for the opportunity to provide comments on the Department’s recent modifications to its proposed rules for commercial financing disclosures (PRO 01/18). We appreciate the Department’s continued efforts to enact clear requirements for providers offering commercial financing. We also appreciate your consideration of our previous comments throughout the rulemaking process.

Though AFSA members primarily offer consumer credit, our members also provide financing to commercial entities. While such activities above certain contract sizes are generally exempted from the requirements of SB 1235/Chapter 1011, we believe clear rules from the Department will ensure this remains the case. With that in mind, we reiterate our previous requests that the rules include a clearer definition of “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.”

A primary objective of TRAC clauses is to provide a financial incentive for lessees to keep leased vehicles in good repair. However, the nature of TRAC clauses created uncertainty as to whether a lessor maintained sufficient equity in the leased vehicle, and therefore, whether the lease should be treated as a true lease or security interest. We would suggest that, by its enactment of 1203(c)(7), the California legislature sought to address that uncertainty and clarify that leases with TRAC clauses are not to be deemed security interests. In order to avoid any ambiguity under 22800, we respectfully request that PRO 01/18 be amended to include a clarification that a TRAC clause (as described in 1203) does not constitute a “purchase option”

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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.

as described in 22800(j)(1) and thus a lease that includes a TRAC clause would not qualify as lease financing.

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,

A handwritten signature in blue ink that reads "Matthew Kownacki".

Matthew Kownacki  
Director, State Research and Policy  
American Financial Services Association  
919 Eighteenth Street, NW, Suite 300  
Washington, DC 20006-5517

cc: Jesse Mattson, Senior Counsel  
Charles Carriere, Senior Counsel