DEPARTMENT OF BUSINESS OVERSIGHT
Ensuring a Fair and Secure Financial Services Marketplace for all Californians

Jan Lynn Owen
Commissioner of Business Oversight

IN REPLY REFER TO:
FILE NO: OP 7408

April 27, 2016

Dennis Brown, Vice President
State Government Relations
Equipment Leasing and Finance Association
1825 K Street, NW, Suite 900
Washington, DC 20006

RE: Request for Interpretive Opinion

Dear Mr. Brown:

Thank you for your December 2, 2015 letter to the Commissioner of Business Oversight (Commissioner) and the Legal Division of the Department of Business Oversight (Department). We provide the following guidance in response to your questions regarding the application of Senate Bill 197 (SB 197)[1] to the Department's administration of the California Finance Lenders Law (CFLL).[2]

SB 197

SB 197 adds provisions to the CFLL authorizing a finance lender to compensate an unlicensed person for the referral of one or more prospective borrowers, provided that specified conditions are met. Those conditions include that the annual percentage rate of the loan may not exceed 36 percent and the licensee must ensure the borrower's ability to repay the loan. SB 197 further sets forth prohibited acts by an unlicensed person receiving compensation from a licensed lender. Finally, it authorizes the Commissioner to issue a desist and refrain order against a person soliciting borrowers in violation of SB 197, or any other provision of the CFLL. SB 197 was intended to increase referrals of business to commercial lenders by allowing them to pay unlicensed persons who make referrals.

[1] SB 197 (Chap. 761, Stats. 2015).
[2] Fin. Code, § 22000 et seq. All further statutory references are to the Financial Code, unless otherwise noted.

Financial Code section 22602(c)(1) through (c)(8), also added by SB 197, lists specific activities that a person making a referral may not engage in if a licensee seeks to pay referral fees to an unlicensed person. It appears from your letter that you seek guidance regarding whether any of these eight activities would constitute unlicensed brokering. "Broker" is defined in Financial Code section 22004 as "any person who is engaged in the business of negotiating or performing any acts as a broker in connection with loans made by a finance lender." Therefore, if a person participates in a loan negotiation[3] or counsels or advises a borrower about a loan,[4] the person is engaged in brokering activity and would require a license. If a person engages in any of the activities listed in subdivision (c)(3) through (c)(8), determining whether they need to be licensed as a broker is a fact-specific inquiry. While serving as an intermediary between a lender and a borrower generally constitutes brokering, clerical or ministerial activities performed under a licensed broker's supervision, not compensated by commission or otherwise tied to the consummation of a loan, may not require licensure as a broker. This analysis too will depend on the facts and circumstances.

The Department's regulations place further restrictions on payments to unlicensed persons. Rule 1451 prohibits a licensee from paying a commission to an unlicensed person, and prohibits the payment of any compensation to an unlicensed person for soliciting or accepting applications for loans.[5] Notwithstanding this rule, SB 197 authorizes the payment of referral fees under the circumstances set forth in its provisions. With this background, we address your specific questions.

1. **SB 197 generally only applies to unlicensed referral activity.**

You ask whether a licensed CFLL lender obtaining referrals from a licensed CFLL broker is affected by SB 197. SB 197 sets forth conditions for a licensee to compensate an unlicensed person for referring borrowers. Thus, a licensed lender compensating a licensed broker for referrals is not activity subject to SB 197.

2. **SB 197 only applies to compensated referrals.**

You ask whether an unlicensed person who is not compensated for the referral of borrowers to a finance lender is subject to SB 197. In particular, you ask whether section 22602, subsection (c)[6] restricts a large commercial truck dealership from preparing and

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[3] Fin. Code, § 22602(c)(1).
[4] Fin. Code, § 22602(c)(2).
[5] Cal. Code of Regs., tit. 10, § 1451.
[6] Subdivision (c) of Financial Code section 22602 provides:
(c) The following activities by an unlicensed person are not authorized by this section:
(1) Participating in any loan negotiation.
(2) Counseling or advising the borrower about a loan.
(3) Participating in the preparation of any loan documents, including credit applications.

handling paperwork for a finance company without compensation. If a finance lender is not paying compensation to an unlicensed person in reliance on section 22602, then subdivision (c) is not applicable to the transaction.

3. **Under SB 197, compensation must be for the referral of a borrower.**

You ask if an amount received by a dealer on the sale of equipment is "compensation" within the meaning of section 22602. The customary profit on the sale of equipment is ordinarily not compensation for the referral of a borrower to a finance lender. However, facts may exist that indicate lender referral fees or brokerage commissions are being included in the sale of equipment. For example, if customers financing transactions are paying higher equipment prices than customers not financing purchases, this scenario may suggest that a commission or referral fee is being included in the price of equipment. However, absent facts to suggest that loan commissions or loan referral fees are built into the pricing structure, margins on sales would not constitute commissions or referral fees for purposes of the CFLL.

4. **SB 197 is not applicable to uncompensated activities.**

You ask which activities, if any, by an unlicensed person are permissible (without compensation), and which are clearly prohibited. SB 197 is only applicable to licensed CFLL finance lenders paying referral fees to unlicensed persons. To the extent an unlicensed person is not receiving compensation from a finance lender, SB 197 is not applicable to the transaction.

5. **Under SB 197, compensation may be indirect.**

You ask whether sales incentives will constitute compensation in the following scenario. A commercial truck manufacturer has a subsidiary that is a licensed finance lender, and the truck manufacturer provides sales incentives to dealers and the dealers' sales personnel. The dealers engage in the activities described in section 22602, subdivision (c).

Under the scenario you describe, the dealers may be "brokers" as defined in section 22004 the CFLL, and licensure may be required. Section 22004 provides that a broker includes any person who is engaged in the business of negotiating or performing any act as a broker in connection with loans made by a finance lender. Additional facts would be needed to make a determination of whether the dealer was engaged in the business of brokering CFLL loans, such as the details of the sales incentives and whether all financing occurred through the subsidiary. SB 197 would not be applicable to the transaction, as the dealers

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(4) Contacting the licensee on behalf of the borrower other than to refer the borrower.
(5) Gathering loan documentation from the borrower or delivering the documentation to the licensee.
(6) Communicating lending decisions or inquiries to the borrower.

are engaging in the activities described in section 22602, subdivision (c), and these activities are not permitted under SB 197.

6. **SB 197 is only applicable to commercial finance lenders paying compensation to unlicensed persons for borrower referrals.**

You describe two scenarios and ask whether they are subject to the compensation restrictions of the CFLL. By way of background, the CFLL does not have "compensation restrictions," necessarily. It requires the licensure of any person engaged in the business negotiating or performing any act as a broker in connection with loans made by a finance lender.[7] While the CFLL does not define the meaning of "engage in the business," in a broad sense "business" has been construed to mean an occupation or trade engaged in for the purpose of obtaining a livelihood or profit or gain.[8] Engaged in business generally implies a "[...] business activity of a frequent or continuous nature," contrasted with a single or occasional disconnected act.[9] Thus, a person is engaged in the business as a broker when the person engages in an activity for profit or gain, on a frequent or continuous nature. However, SB 197 authorizes a finance lender to compensate an unlicensed person for the referral of borrowers, within the limitations of the bill, without regard to whether the activity would rise to the level of "brokering" in section 22004 and require licensure. Thus, for any referral activity that does not fall within the newly established safe harbor of SB 197, the applicability of the CFLL remains the same as prior to the enactment of SB 197.

You request guidance on the following hypotheticals:

> "1. State A is not California. Dealer in State A will deliver equipment to State A to be used in State A. The customer is a California corporation and the finance lease documents are signed by the customer in California. Is the transaction subject to the compensation restrictions of the CFLL?
>
> 2. Dealer and Customer are from State A and the equipment is delivered and used in California. Is the transaction subject to the compensation restrictions of the CFLL?"

The hypotheticals do not describe brokering activity, and do not describe activity falling under the safe harbor of SB 197. Therefore, we are unable to provide guidance on the scenarios. However, we note that in both situations we would be looking at what acts of the finance lender and broker caused these entities to be conducting business with a California business.

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[7] Fin. Code, § 22200.
[8] Commissioner's Opinion No. OP 6615 CFLL, March 11, 1997, quoting *Mansfield v. Hyde* (1952) 112 Cal.App.2d 133, 137.
[9] Commissioner's Opinion No. OP 6615 CFLL, supra, quoting *Advance Transformer Co. v. Superior Court* (1974) 44 Cal.App.3d 127.

You ask whether SB 197 governs the activity of an unpaid broker. SB 197 does not govern the activity of an unpaid broker. SB 197 is a safe harbor that permits a finance lender to pay compensation to an unlicensed person for the referral of a borrower, under the circumstances described in the bill.

7. **Notice to borrowers regarding referral fees is not required for uncompensated referrals.**

You ask whether the notice to prospective borrowers under section 22603 of SB 197 is required to be given to any prospective borrower who has been referred by an unlicensed person to a finance lender, regardless of whether the unlicensed person will receive compensation for such a referral. The Department does not interpret section 22603 as requiring a notice regarding referral fees be provided to a borrower if the referral does not involve compensation.

8. **An out-of-state broker is subject to the CFLL if the broker is engaged in the business of negotiating or performing any act as a broker in connection with loans made by a finance lender to California citizens.**

You ask whether a broker engaged in business in California from an out-of-state location is subject to the CFLL. As an initial matter, SB 197 does not affect the described scenario; the bill is limited to referring borrowers to lenders, and "referral" is defined as either the introducing the borrower and finance lender, or the delivering the borrower's contact information to the finance lender. With that background, you describe the following scenario: A California business in need of equipment or financing obtains an East Coast lender through an East Coast broker without a California broker license, and the transaction is completed on the East Coast without the lender or broker entering the state of California. You indicate that documents are sent via mail or e-mail. The question you pose is whether the broker is doing business in California.

Based on your hypothetical, the Department would not have enough information to determine whether the broker is doing business in California. However, we can provide the following guidance. Whether a lender or broker is doing business in California is based on the lending or brokering activity conducted in this state.[10] Lending to California citizens, or brokering loans on behalf of California citizens, are facts suggesting the lending or brokering activity is occurring in this state. We would look at other factors, such as whether a lender or broker solicits borrowers in California (directly or indirectly), and whether brokering on behalf of California borrowers is of a continuous nature. If the lender or broker's business activity has sufficient contact with California, then licensure would be required. Your membership is welcome to request additional guidance from the Department, based on their individual contacts with California.

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[10] *See People v. Fairfax Family Fund* (1964) 235 Cal.App.2d 881.

9. <u>The CFLL requires both brokers and lenders to be licensed.</u>

You ask whether a broker can participate in a transaction under the authority of a lender's CFLL license, without separate licensure. The CFLL requires both lenders and brokers to hold their own licenses. [11]

10. <u>A licensed lender may not pay a commission on a loan to a California borrower that was brokered by an unlicensed broker located outside of California unless the broker is not engaged in business in California.</u>

You ask whether a licensed lender may pay a commission on a loan to a California borrower that was brokered by an unlicensed broker located outside of California. A broker engaged in business in California must be licensed, regardless of where the broker is located. Whether a broker is engaged in business in California is a question of fact. You further ask how such an expansion into interstate commerce would be justified. The Department relies on *People v. Fairfax Family Fund* in that regard.[12]

You ask that the Department explain requirements for each party in a transaction for a broker in Alabama to get paid for a loan to a California company, made by a Minnesota lender to finance equipment sold by a New York vendor. You ask whether the broker must be licensed and therefore be qualified as a foreign corporation. From your hypothetical, we do not have sufficient facts to know whether the lender or broker is engaged in business in California. The relevant facts include whether the out-of-state lender and broker are soliciting borrowers in California.

11. <u>The business of brokering CFLL loans requires a CFLL license, unless the broker is exempt from the CFLL.</u>

You ask whether we agree a bank or related entities including bank owned affiliates, subsidiaries and bank holding company can pay a commission to an unlicensed broker who assists with acquiring commercial lease financing. We offer the following guidance in response to this question. Under the CFLL, the business of brokering CFLL loans requires a CFLL license. Therefore, if a broker is not brokering loans made by a CFLL lender, then the CFLL would not be applicable. If, however, the lender is subject to licensure under the CFLL, then the broker would also be subject to CFLL licensure. If the lender is exempt from the CFLL under a provision of the CFLL exempting the lender from licensure, such as the bank exemption, then the lender would not be making a CFLL loan and the broker would not need a CFLL license.

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[11] *See* Fin. Code, § 22100.
[12] *People v. Fairfax Family Fund* (1964) 235 Cal.App.2d 881.

You ask whether nonbank subsidiaries and affiliates of national banks (including affiliates of federal savings associations) may compensate unlicensed persons for the activities listed in section 22602, subdivision (c). You further ask whether nonbank subsidiaries and affiliates of national banks, including affiliates of federal savings associations, are exempt from the licensing requirements of the CFLL. If the nonbank subsidiaries and affiliates of national banks and federal savings associations must be licensed under the CFLL, then they may not compensate unlicensed persons for brokering activity on CFLL loans.[13] However, the Commissioner has concluded in some past interpretive opinions that commercial lending by certain subsidiaries or affiliates falls within an exemption for depository institutions under the CFLL.[14] Consequently, if licensure is not required of the lender, licensure is not required of the broker.

12. <u>SB 197 authorizes a commercial finance lender to pay compensation to any unlicensed person, as provided.</u>

You ask whether SB 197 is limited to brokers, or whether it applies to any unlicensed person, including a vender or reseller. The law permits a licensed lender to pay a referral fee to any unlicensed person, not just brokers, provided that the other conditions are met. Therefore, a CFLL licensee may pay a fee to an unlicensed vendor or reseller for a loan referral, provided that the conditions of the bill are met.

You ask whether a website that collects basic information from customers on behalf of client lenders who pay for leads would fall under SB 197. If the website does not engage in any of the activities in section 22602, subdivision (c), then under SB 197 a licensed lender may compensate the website, through a subscription or otherwise, for commercial loan leads. The licensed lender and the website must comply with all of the other requirements of the bill. The referral activity authorized under SB 197 will not require the unlicensed person to obtain a license as a broker.

13. <u>A finance lender is responsible for ensuring it is in compliance with the CFLL.</u>

You ask whether a licensed lender who pays a commission to an out-of-state broker is obligated to ensure that the broker is licensed, has brokered less than 5 transactions or is otherwise exempt. SB 197 authorizes a licensed lender to pay an unlicensed person for a referral, provided that all of the conditions set forth in SB 197 are met. Consequently, the licensed lender is only authorized under SB 197 to pay compensation to an unlicensed person if the licensee ensures the conditions of the section are met.

Notwithstanding SB 197, existing section 1451, title 10, California Code of Regulations (Rule 1451) prohibits a finance lender from paying any compensation to an unlicensed

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[13] Fin. Code, § 22757.

[14] *See* Commissioner's Opinion Nos. OP 5767 CM (December 1, 1988), OP 5792 CM (December 1, 1988), and OP 5862 CM (February 24, 1989).

person for soliciting or accepting applications for loans, except as provided. Specifically, Rule 1451 provides that a finance lender may pay compensation for soliciting or accepting applications or performing services as a broker to a licensed real estate broker with respect to specified real estate loans, or for any brokerage service rendered by a bank, savings and loan association or any other financial institution exempted by the CFLL. In addition, Financial Code section 22757 prohibits a finance lender from paying any commission, fee, or other compensation to an unlicensed individual for conducting activities that require a license, unless the unlicensed individual is exempt. Therefore, a licensee must ensure that the recipient is either licensed under the CFLL or not required to be licensed under either Rule 1451 or SB 197.

14. SB 197 is permissive and does not place new obligations on lenders.

You also ask whether SB 197 expands a lender's duties so that it cannot pay a commission to any person whether or not that person is required to have a license, unless the loan complies with the state safe harbor rules (36 percent interest, etc.). We think you are asking whether SB 197 places new obligations on lenders. As discussed above, California law and the Department's rules already impose a legal obligation on licensees to not compensate an unlicensed person for brokering activities or for soliciting or accepting applications for loans, unless the licensee complies with the provisions of SB 197. We do not believe SB 197 expands the lender's duties.

15. A finance lender must ensure the person to whom compensation is paid is not required to be licensed.

You ask whether a lender can rely on a broker's representation that it has a license, or that it is exempt because it has brokered less than five loans in California. Again, a finance lender must ensure that the person to whom it pays commission is licensed or not required to be licensed under the CFLL. With respect to relying on a broker's representation that it has a license, since the Department provides the ability to look up the license status of any person on the Department's website, the Department would expect a licensee to ensure compliance with the law through this action. Thus, the representation of a broker would not be sufficient to satisfy the finance lender's obligation not to pay an unlicensed person. With respect to brokering five or fewer commercial loans in a 12-month period, since a licensee may not have any practical means of verifying this information, during the Department's regulatory examination of a licensee the Department would not object to evidence of compliance in the form of an unlicensed person's written assurance of meeting this criterion provided that other known facts would not render a lender's reliance on this assurance unreasonable.

16. SB 197 is intended to authorize the payment of compensation for unlicensed persons referring commercial borrowers to lenders.

Finally, you ask for the rationale for SB 197 not authorizing an unlicensed person to engage in the activities listed in section 22602, subdivision (c). Our understanding of the legislative history is that SB 197 was intended to authorize the payment of compensation to an unlicensed person for the referral of a borrower, in certain limited circumstances. To our knowledge, the bill was not intended to eliminate the licensure of brokers or to authorize any compensated activity other than the referral of borrowers. Therefore the bill appears to be narrowly crafted to permit compensation for unlicensed referral activity under limited conditions.

We hope we have answered the association's questions about SB 197 and the applicability of the CFLL. We look forward to a continuing dialogue about your industry and how it is impacted by the new law.

Sincerely,

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Commissioner of Business Oversight

By
Colleen Monahan
Senior Counsel

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Date: December 2, 2015

TO: Commissioner
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From: Dennis Brown
Vice President
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RE: Request for an Interpretive Opinion

The Equipment Leasing and Finance Association (ELFA) represents financial services companies and manufacturers in the commercial equipment lease finance sector. Many of our members accept referrals from brokers. ELFA requests on behalf of our association members an interpretive opinion to each of the questions presented below concerning implementation of Senate Bill 197. This request conforms to Interpretive Request requirements outlined in Department of Business Oversight Release No. 61-C (Revised) on May 28, 2014, as ELFA members would in some cases be principal parties to the prospective transactions cited, legal analysis applicable to the facts is presented, this request poses specific prospective legal questions and responses from the Department of Business Oversight will be distributed industrywide for reliance when seeking to comply.

Intrastate versus interstate transactions involving a broker, lender and/or vendor within or outside California has raised questions about the interstate reach of this revision to Lenders License law. This is amplified because qualifying to do business in California and requirements to have a lender's license appear set against each other.

As background on the questions below, the California Model Business Corporation Act contains the standard provision that a corporation (or an LLC under a companion statute) is not doing business in California if it is transacting business in interstate commerce. Corporations Code §2501(a), §191(a) and §191(c)(6) are among indicators that if you are not conducting intrastate business in California, you need not obtain from the Secretary of State a certificate of qualification.

With certain exceptions, under Fin. C. §22100 a finance lender or broker must be licensed before transacting business in California, with §22009 citing consumer and commercial loans. Senate bill 197 seeks further restrictions on loans to small business. There is a conflict in law: The application for the lender's license requires that the licensee be qualified to do business in California. Complexities that small independent broker's encounter to obtain a California Finance Lenders License is legend with durations of 9 months or more often cited. Annual administration forms completed by them are extremely challenging, time consuming and results in no value as they enter literally 0 for every category. This convergence of Lenders License requirements with the Corporations Code is perplexing to our members engaging intrastate and interstate transactions.

The above information provides legal background applicable to the facts presented in prospective questions offered below. These questions when taken together with examination of applicable law presented above offer facts sufficient for interpretive opinions.

Questions:

A licensed lender gaining referrals from a licensed broker is unaffected by this legislation. Correct?

What about unlicensed dealers that are not compensated. For example, suppose a large commercial truck dealership prepares and handles paperwork for the finance company without compensation because it assures financing for the dealer's sales. 22602 (c) states in part: "The following activities by an unlicensed person are not authorized by this section" Note that (c) does not state whether the activities only apply to compensated persons. Is "the section" limited to compensated activities? If the only amount received by the dealer is the margin on the sale of the equipment, would this be considered as "compensation" within the meaning of the statute? Which activities, if any, by an unlicensed person are permissible (without compensation) and which are clearly prohibited?

Furthermore, assume a situation where the large commercial truck manufacturer provides compensation to the dealer (and the dealer's sales personnel) from time to time in the form of certain sales incentives. The truck manufacturer has a finance subsidiary which maintains a finance lender's license. The dealer provides the activities outlined in 22602(c) to facilitate the sale and financing of the truck. Are these activities permissible by the unlicensed dealer (or sales personnel) without additional compensation provided by the finance subsidiary?

Connecting the dealer issue to common marketplace transactions, please respond to the following interrelated questions:

1. State A is not California. Dealer in State A will deliver equipment to State A to be used in State A. The customer is a California corporation and the finance lease documents are signed by the customer in California. Is the transaction subject to the compensation restrictions of the CFLL?
2. Dealer and Customer are from State A and the equipment is delivered and used in California. Is the transaction subject to the compensation restrictions of the CFLL?

The California Lender Law (Financial Code Section 22007) only applies to a "licensee" defined as a "finance lender": one "who is engaged in the business of making... commercial loans", meaning actually being on the loan (Financial Code Section 22009). A "broker" is defined as "one who is engaged in the business of negotiating or performing any act as broker in connection with loans made by a finance lender" (Financial Code Section 22004) including filling-in forms, and getting the customer's signatures on contracts whether the broker is on the loan or not. There is an assumption the broker is paid and therefore falls under restrictions of the new law. But if the "broker" is not paid does Senate Bill 197 govern their activities?

Is the notice to prospective borrowers under Section 22603 of the California Finance Lenders Law ***required*** to be given to ***any*** prospective borrower who has been referred by an unlicensed person, ***regardless*** of whether the unlicensed referring party is to receive a fee or other compensation for such referral? This would require licensed California finance lenders to notify applicants that "we may pay a fee to [Name of Unlicensed Person] for the successful referral," even if no fee is to be paid, which could be a cause of confusion and misunderstanding.

Small independent brokers serve the small business community nationally as a conduit for small business lending. If a California business needing equipment and/or financing gets an East Coast lender that has both a California lender license and a foreign corporation license through an East coast broker that has neither a California lenders license or a California foreign corporation license, and the transaction is completed on the East Coast without the lender or the broker ever entering the state, and documents are sent via mail or email, is the broker doing business in California? If so, can the broker participate in the transaction under the "umbrella" of both the lender's California lender license, and its California foreign corporation license so that the broker does not have to get its own foreign corporation license? Allowing the broker to piggyback on the lender's licenses would seem to track the intent expressed by the Department to ease the flow of deals.

If a small business borrower is in California, can a licensed funder pay a commission on a loan to that borrower brokered by an unlicensed broker located outside California without complying with the requirements of the statute including the disclosures and restrictions? How would such expansion into interstate commerce be justified?

The preceding questions simplify complexity of the commercial finance marketplace. Please explain requirements for each party in a transaction for a broker in Alabama to get paid for a loan to a California company, made by a Minnesota lender to finance equipment sold by a New York vendor? Must the broker must be licensed and therefore be qualified as a foreign corporation?

Do you agree a bank or related entities including bank owned affiliates, subsidiaries and bank holding company acquisitions for purpose of commercial lease financing can pay a commission to an unlicensed broker?

May nonbank subsidiaries and affiliates of national banks (including affiliates of federal savings associations) compensate unlicensed persons for the activities listed in 22602(c)?

Are nonbank subsidiaries and affiliates of national banks (including affiliates of federal savings associations) exempt from the licensing requirements of the California Finance Lenders Law?

The law does not appear to limit itself to unlicensed brokers but instead "unlicensed persons" is the term used. Does this mean the "person" does not need to be a "broker" for this new law to apply? Does this mean that any time a licensed lender pays a fee to anyone (e.g. a vendor or reseller), that the lender must comply with the conditions set out in the law?

What if I have a website that collects basic information from customers on behalf of client lenders who subscribe for the opportunity to quote and write transactions for the folks I attract? Am I a broker for the purposes of this law? I'm doing essentially what a broker does.

If a licensed lender pays a commission to a broker who is not located in California, is the lender obligated to ensure that the broker is licensed, has brokered less than 5 transactions or is otherwise exempt? Does the law expand the lender's duties so that it cannot pay a commission to any person whether or not that person is required to have a license, unless the loan complies with the stated safe harbor rules (36% interest, etc)? Can the lender rely on a broker's representation that it has a license? That it is exempt (has brokered less than 5 California loans)?

What is the rationale for distinguishing when an unlicensed party refers a deal that the unlicensed party, who is to be paid by the lender in most cases, for the "referral" can't participate in loan negotiation, counseling or advising, prep or gathering loan docs, obtaining signatures, like? That will distort market functioning and economics for California borrowers.

Conclusion:

Small business lenders throughout the U.S. are utilizing credit scoring models that do not involve cash flow analysis and/or net worth or other specific financial information. This is the whole nature of "fintech" and the evolution of small business credit. This enactment of law turns the clock back by constricting credit and raising its cost by dictating underwriting and risk management techniques and process. This change has potential to shut down much small business credit that is not underwritten with financial statements. Licensing should not place restrictions on a proven manner of transacting credit nor requirements on how to evaluate and process credit. Those are inherent risks in the credit and finance industry that each lender is responsible for.

Taken as a whole, restrictions implemented by this revision to the California Finance Lenders License law mean the cost of doing business for lessors handling transactions with small business will increase as a result of this bill if (a) the lender/lessor cannot utilize vendors to transmit documents and gather information and (b) have to do extensive credit checks with financial statements on each prospective borrower/lessee. In addition, this will slow down the time for approval when sometimes it is necessary for the borrower or lessee to acquire equipment as soon as possible to preserve a competitive advantage in the marketplace for the small business. Attempting to extend this unique administrative forest within the state and prospectively nationwide simply means fewer brokers will continue doing business with small business in California thereby restricting access of small business to needed finance. Your interpretive responses to our questions will help gain a better understanding.

Sincerely,

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