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December 18, 2018

Subject: PRO 01-18

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

Dear Mr. Dyer:

This letter is submitted in response to the "Invitation for Comments: Commercial Financing Regulations," issued by the Department of Business Oversight (DBO) on December 4, 2018. As Chair of the Senate Banking and Financial Institutions Committee, I worked closely with Senator Glazer to refine his Senate Bill 1235 and am very interested in seeing the bill achieve its intent.

SB 1235 is a first-in-the nation disclosure bill designed to help small businesses understand, compare, and contrast the financing offers they receive and select the financing offer that best suits their individual situation. I share Senator Glazer's concern that some small business owners lack the sophistication to fully understand what can be very complex financing options. I also agree with the intent of SB 1235 to provide clear, readily understandable disclosures to small business borrowers. I believe we must ensure that the disclosures developed to implement SB 1235 are designed in a way that they help, rather than confuse, small business borrowers.

For that reason, I believe it is very important for DBO to test any disclosures it develops to implement SB 1235, before requiring use of those disclosures by providers of small business financing. The testing process I envision is commonly used by federal financial regulators when developing and revising consumer disclosures (e.g., the federal Consumer Financial Protection Bureau (CFPB) when developing the integrated mortgage disclosure forms known as the TRID; the Federal Trade Commission, Securities and Exchange Commission, and federal banking agencies when developing model privacy disclosures; and the federal Department of Housing and Urban Development (HUD) when revising the Good Faith Estimate and HUD-1 settlement forms).

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Federal financial regulators seeking to develop consumer-friendly financial disclosures frequently contract out with skilled private sector professionals to aid in the design, testing, and refinement of those disclosures (see <https://www.kleimann.com/portfolio>). I strongly encourage your department to consider this option. The commercial financing disclosure(s) that DBO develops to implement SB 1235 will serve as models for the rest of the nation. I believe we have a compelling obligation to ensure that those forms are as clear and as helpful to small business borrowers as possible. If DBO lacks sufficient existing resources to absorb the cost of an external consultant to aid in developing and testing of SB 1235 disclosures, I encourage your department to seek additional budget authorization for this purpose.

However, if you choose to take on the task of forms development and testing internally, I believe that the testing performed by the CFPB and its private contractor to develop and refine the TRID provides an excellent model for your use (see https://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-testing.pdf). When developing the TRID, the CFPB and its private contractor (the Kleimann Communication Group) used an iterative process, during which feedback received during each round of testing was incorporated into later versions.

The CFPB and Kleimann also tested their prototypes on a wide group. Consumer input was helpful for identifying which aspects of the prototype forms were clear, and which were confusing. Industry input was valuable for understanding how the regulated community would complete the prototype forms and use those forms to explain loans to consumers, and to aid in identifying implementation issues. Separately, the CFPB placed prototype forms online and encouraged feedback from the public. The CFPB and Kleimann used input from all three sources (focus group consumers, focus group industry participants, and members of the public) to refine and improve the forms' clarity. This iterative approach produced final forms that were proven, through quantitative testing, to be significantly clearer than prior forms of the same type.

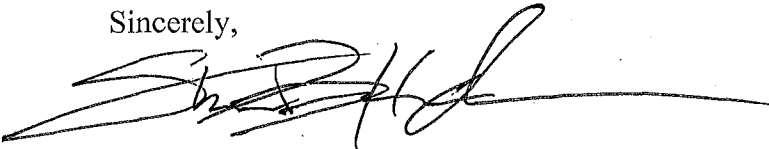
Notably, the CFPB also asked Kleimann to test Spanish versions of their disclosures, to determine whether there were any structural issues in the forms' designs that could cause differences in performance for Spanish speakers. The Spanish language testing focused on translation issues, with a particular focus on terms that may not convey the same meaning, when translated directly from English into Spanish. I strongly encourage DBO to conduct similar testing of translated versions of its commercial loan disclosure forms, to ensure that small business borrowers whose first language may not be English are afforded the same benefit from the disclosure forms that is realized by native English speakers.

Thank you very much for considering my comments. Please do not hesitate to call me if you have any questions.

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Sincerely,

A handwritten signature in black ink, appearing to read 'S. Bradford', with a long horizontal line extending to the right.

STEVEN BRADFORD, Chair
Senate Banking and Financial Institutions Committee

Cc: Charles Carriere (via e-mail)
Senator Steve Glazer
Senator Richard Roth, Chair, Senate Budget Subcommittee Number 4