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June 26, 2024

Honorable Steven Glazer
1021 O Street, Suite 7520
Sacramento, CA 95814

SB 1482 (Commercial financing) OPPOSE UNLESS AMENDED

Dear Senators Glazer and Limón,

On behalf of the Electronic Transactions Association ("ETA"), the leading trade association representing the payments industry, we appreciate the opportunity to share our opposition and broad concerns with SB 1482.

While ETA supports licensure that promotes transparency and accountability for small business borrowers and consumers, we believe that the goals of SB 1482 can be accomplished through existing California law.

ETA's concerns with SB 1482 can be summarized as follows:

CFL Exemption: As written, SB 1482 does not clarify how it interacts with the current licensure scheme. ETA requests that an entity exempt from the CCFPL pursuant to FC 90002(b) or under the California Money Transmission Act is not subject to the bill and such is explicitly stated in the bill. CFL and MTL licensees should be exempt from the registration requirement since most of the information required under this registration is already provided by the licensee as part of the licensure process and annual reporting requirements.

- **Duplicative information provided to Department of Financial Protection and Innovation ("DFPI"):** Assuming CFL licensees are exempted, licensees that offer MCAs would still have to register under SB 1482, meaning that companies would be required to hold a license and registration simultaneously. These requirements are redundant and burdensome, and have not provided clear guidance to licensees on how to annotate their applications within the NMLS system.

Scope of information required: Unlike other states that require broker registration, California requires submission of extremely detailed information. Given the DFPI's disclaimers that it is not evaluating a licensee's compliance with applicable law, ETA requests clarification as to why such detailed information must be provided. In addition to MU1 and MU2 forms submitted through NMLS, applicants are required to provide the following information, among others, directly to the DFPI:

- 1. Images documenting the standard enrollment or application process,
- 2. Any standard enrollment materials or applications provided to residents in connection with the offer or sale of the subject product,
- 3. Copies of representative contracts and disclosures
- 4. A list of addresses of all branch locations
- 5. The applicant's gross income for the prior calendar year

Additionally, Section 90029 (15) B & C require disclosure of a detailed schedule of the charges associated with the products and services provided to California residents and disclosure of the

marketing practices of an applicant. ETA again requests clarification as to why such detailed information must be provided.

Impact to Californians:

Availability of financing opportunities: For providers, the requirement for registration and the depth of the information required may discourage certain providers/brokers from offering their services in California. ETA supports maintaining choice in small business financing, however, SB 1482, would impose burdensome barriers for providers of commercial financing, and likely result in less options for the very businesses the legislation aims to protect.

Potential unintended consequences: This law would require registered brokers to disclose their registration number on certain surfaces, in addition to providing recipients of financing with a detailed, prescriptive disclosure mandated by the commercial financing disclosure law. Imposing an additional requirement to disclose registration status is beyond other states will lead to confusion about where this disclosure does or does not need to appear without an exhaustive list of required disclosure surfaces. Further, disclosing this registration status may actively mislead small businesses, given the disclaimers in Section 90026. Proposed Section 900268 expressly disclaims that 1) broker registration approved by the Commissioner does not constitute a determination that this is the correct license for the registrant and 2) that granting a registration does not constitute a determination that the licensees' acts, practices or business model are compliant with law. A reasonable small business could be led to believe that the inclusion of registration number with reference to a specific regulator means that there has been some evaluation of the legitimacy of that licensee, but under this regime, this type of reliance would not be warranted.

Oversight & Administrative Burdens: It is unclear based on previous Committee and Floor analyses what DFPI's capacity is to oversee and enforce SB 1482 should it be enacted. Subsequent versions have not suggested that this concern has been eliminated. An administrative backlog will neither benefit small businesses in California nor constrain potential bad actors operating in California.

- **Enforcement concerns:** Should SB 1482 be enacted, it will lead to hundreds of new applications from companies seeking to become licensed providers or brokers. This may constrain the DFPI's ability to enforce the law due to a focus on processing registrations. Further, unfair, deceptive or abusive practices are already prohibited by various state and federal laws, and the burden imposed by SB 1482 on DFPI could mean that "the process may weed out fewer bad actors" according to Senate Floor Analysis.
- **DFPI Workload:** The Senate Appropriations Analysis states that there will be an "[u]nknown ongoing additional workload for the DFPI to administer the registration program (Financial Protection Fund)." The cost to process registrations is likely to be significant, because the proposed amendments require a separate registration to be submitted for each "subject product" offered by entities subject to this bill. Further, because it appears that several entities already licensed by DFPI under the CFL will be required to apply for registrations, DFPI will likely need to expend effort to determine how applicants that hold both a CFL license and one or more separate registrations

required by these amendments should annotate their applications within the NMLS system. Moreover, the requirement for annual reporting will also further burden the DFPI as it will need to create the reports and the associated process along with reviewing those reports. This is also discussed in more detail under CFL exemption.

- **Drafting regulations:** Requiring registration, a process that took years with SB 1235, and required DFPI to expend time not only drafting the regulations but responding to every comment submitted.
- **Hiring staff:** A significant number of new staff will be required to process the large number of registrations anticipated. However, until those staff can be hired, and because the bill does not contain a delayed operative date, DFPI will be required to shift staff from their existing tasks to handle the workload created by this bill. It is unclear that the DFPI has the bandwidth to make this shift given its existing high workload.

Clarification on vague provisions:

- Subdivision (a) of Section 90050(b): States that commercial financing providers and commercial financing brokers "shall not include a provision in a commercial financing transaction agreement or contract that authorizes [them] to attach or garnish any of a recipient's money held in an account in a depository institution." The scope of this provision is unclear and additional clarity is needed for commercial financing providers and commercial financing brokers to understand what conduct is intended to be covered by this prohibition and whether or not it impacts any legal remedy afforded to a provider under state law
- Subdivision (c) of Section 90050(c): States that a "commercial financing transaction found to be unconscionable pursuant to Section 1670.5 of the Civil Code shall be deemed to be in violation of this division and subject to the remedies specified in this division." The scope of this provision is unclear, vague, and unnecessary given that such conduct already presumably is remedied through the civil code.
- Subdivision (d) of Section 90050(d): States that a "commercial financing provider or a commercial financing broker shall not include a provision in a contract or agreement with a recipient that limits or restricts the recipient from disclosing information that the recipient gains from the recipient's business activities with the registrant, including, but not limited to, terms or conditions of a product or service offered by the registrant." The meaning and scope of this provision is vague and unclear and too broad. For example, would this cover the terms of a settlement agreement? Additionally, if you are in litigation with a confidentiality order, would this supersede the order?

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We thank you for your work to protect recipients of small business financing. Unfortunately, although we share several of the same goals, we must regretfully oppose Senate Bill 1482, unless amended. Therefore, ETA urges the committee not to pass SB 1482 in its current form and welcomes the opportunity to work with the sponsor and proponents to develop a legislative proposal that is clear, fair, and uniform and that all parties can support.

Thank you for the opportunity to participate in the discussion on this important issue. If you have any additional questions, you can contact me or ETA Senior Vice President, Scott Talbott at stalbott@electran.org.

Respectfully Submitted,

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CC: Members, California State Legislature