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SECURED FINANCE NETWORK

January 18, 2023

Rohit Chopra

Director, Consumer Financial Protection Bureau

Via email:

Re: CA and NY Commercial Loan Disclosure Regulations Docket No. CFPB-2022-0070

Dear Director Chopra:

In response to the Consumer Finance Protection Bureau's ("CFPB") request for comments regarding the CFPB's position that the recent regulations enacted by California's Department of Financial Protection and Innovation in support of the California's Commercial Disclosure Act and the proposed regulations being promulgated by the Department of Financial Services of the State of New York in support of commercial loan disclosure provisions of the New York Commercial Finance Law do not preempt the federal Truth in Lending Act ("TILA") and Regulation Z which implements TILA, the Secured Finance Network submits this letter in opposition to the position of the CFPB.

The Secured Finance Network (formerly known as the Commercial Finance Association) ("SFNet") is the international trade organization founded in 1944 representing the secured asset-based lending, factoring, trade and supply chain finance industries, with 280 member organizations throughout the States of California and New York, the U.S., Canada and around the world. Our network of secured lenders, finance companies, service providers and others do the essential work of providing capital that fuels our nation's economy. Our members include regulated money center banks, independent finance companies, community banks, factors and leasing companies, which provide hundreds of billions of dollars annually in working capital to thousands of small businesses throughout the United States.

It is SFNet's position that requiring commercial lenders to use TILA and Regulation Z, which relate exclusively to the disclosure of consumer transactions and, by their terms, have no applicability to the disclosure of commercial transactions, results in materially misleading disclosures that are of no benefit to the

borrower. To illustrate this point: the CFPB need only review SFNet's Guide to the California Commercial Disclosure Laws and Regulations (attached) to see firsthand how attempting to follow the dictates of TILA and Regulation Z, even as modified by the California Regulations, can easily result in constant and material misleading disclosures even, when based on the same hypothetical transaction.

As it relates specifically to the question of whether the preemption provisions of TILA and Regulation Z contravene the NY and California regulations, we must first look to the language of TILA and Regulation Z. This legislation specifically provides that TILA and Regulation Z do not preempt state law unless the state law is inconsistent with the provisions of TILA and Regulation Z. The legislation goes on to say that a state law is contradictory if it requires the use of same term to represent a different amount or a different meaning. It is the position of SFNet that the California and NY regulations clearly modify the TILA and Regulation Z definitions of the term "Finance Charge" and the calculation of APR and are, therefore, contradictory and inconsistent with TILA and Regulation Z when it comes to the application of these terms. The NY and California regulations go so far as to define the calculation of APR for an "open ended transaction" by using the TILA and Regulation Z APR calculations for what TILA and Regulation Z refer to as a "closed end" transaction. Clearly, the corruption of these definitions by the NY and California regulators results in federal preemption.

SFNet believes that rather than focus on the issue of preemption regarding the regulations enacted in the various states, the efforts of CFPB would be better served by supporting federal legislation which would codify for all states the manner in which commercial transactions are disclosed and eliminate the "patch work quilt" of the disclosure protocols, which are, and in the future will be, enacted by the various states.

Sincerely,



Richard D. Gumbrecht  
Chief Executive Officer  
Secured Finance Network