



November 2, 2021

Department of Financial Services  
 George Bogdan  
 1 State St  
 New York, New York 10004  
[george.bogdan@dfs.ny.gov](mailto:george.bogdan@dfs.ny.gov)  
 VIA ELECTRONIC TRANSMISSION

**RE: Proposed 23 NYCRR 600, Disclosure Requirements for Certain Providers of Commercial Financing Transactions**

Dear Mr. Bogdan,

Since long before the pandemic, small business owners have had to struggle through a myriad of unfamiliar rates and terms to secure financing. Hard-working entrepreneurs, particularly people of color, are misled into taking on

Responsible Business Lending Coalition  
<http://www.borrowersbillofrights.org/>

financial products that drain the life out of their business. The COVID-19 pandemic has made small business owners desperate for funds to stay afloat, leaving them vulnerable to predatory lenders.

Fortunately, in 2020 the New York State legislature passed the Small Business Truth in Lending Act (SB5470B, now Article 8 of the Financial Services Law), bringing sunshine to the commercial financing marketplace. On October 20, 2021, the New York State Department of Financial Services (“Department” or “DFS”) published a thoughtful and comprehensive draft rule that enables New York to set a strong national standard for small business truth-in-lending disclosures. DFS’ regulations will empower entrepreneurs with the standardized, transparent disclosures they need to compare financing options and select the best product for their business.

We, the undersigned coalition of 62 non-profit organizations and for-profit lending companies, thank the Department for publishing a strong proposed rule that included thoughtful revisions to the pre-proposed outreach draft. We recommend two additional changes intended to further strengthen small business borrower protections and enable interstate harmonization.

## Recommendation 1: Incorporate October 12, 2021 California regulatory updates to enable interstate harmonization and innovation.

We commend the Department for incorporating provisions of the California Department of Financial Protection and Innovation’s (“DFPI”) draft commercial financing regulations published on August 9, 2021. We also thank the Department for including our recommended change to ensure that borrowers receive disclosures for any offer they consider when presented with multiple offers, rather than only for the single offer the small business selects to move forward with. These changes strengthened the Department’s draft rule and will enable interstate harmonization.

You likely noted that DFPI published additional changes on October 12, 2021, just before DFS published its draft regulation. DFPI’s October modification clarified provisions throughout the August version and also included an update to promote flexibility for financing applications submitted via mobile devices.

On [page 10](#) of the October update, DFPI added the highlighted language below under General Formatting, Fonts:

*“(D) A provider may deviate from the font requirements described in subdivisions (a)(7)(B) and (C) if the provider makes a good faith determination that deviating from the standards is necessary:*

*i. To comply with the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.);*

*or*

*ii. For clarity based upon the medium (e.g. mobile device) in which the disclosure will be presented.*

We encourage the Department to adopt this language and other changes made in DFPI’s third modification published October 12, 2021, to ensure continued interstate harmonization and support innovations in small business financing delivery systems.

## **Recommendation 2: Include S5470B’s requirement to disclose APR any time price or amount are stated, even outside of the required disclosure.**

We urge the Department to implement an important financial protection for small businesses that is included in Article 8, Section 810 of the Financial Services Law. Section 810 requires APR to be disclosed throughout the application process at any time the price or financing amount are stated, including outside of the required disclosure:

“§ 810... WHEN A PROVIDER STATES A RATE OF FINANCE CHARGE OR A FINANCING AMOUNT TO A RECIPIENT DURING AN APPLICATION PROCESS FOR COMMERCIAL FINANCING, THE PROVIDER SHALL ALSO STATE THE RATE AS AN "ANNUAL PERCENTAGE RATE", USING THAT TERM OR THE ABBREVIATION "APR".<sup>1</sup>

This additional disclosure of APR would come up, for example, during the application process after the required disclosure has already been provided to the applicant.

This provision of the New York Small Business Truth in Lending Act was based in part on Regulation Z, which implements the federal Truth in Lending Act. Regulation Z, § 1026.24(c) states, “If an advertisement states a rate of finance charge, it shall state the rate as an ‘annual percentage rate,’ using that term.”<sup>2</sup>

However, Section 810 of Article 8 is somewhat more flexible than Regulation Z, as it permits other forms of rate to be disclosed as well, in order to consider the range of different products in the commercial financing market such as sales-based financing and factoring, so long as those rates are described in ways that are compliant with the requirements of Section 810. In contrast, Regulation Z, § 1026.24(c) is more limiting and highlights APR further, stating that, “If an advertisement is for credit not secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.”<sup>3</sup>

By addressing Section 810 in the rules, the Department will help ensure that small business borrowers are able to make apples-to-apples price comparisons using APR throughout the application process, including outside of when the full form disclosure is presented to them.

---

<sup>1</sup> Financial Services Law (FIS) CHAPTER 18-A, ARTICLE 8, § 810, “Additional Information.”

<https://www.nysenate.gov/legislation/laws/FIS/810>

<sup>2</sup> Regulation Z, § 1026.24(c), available at: <https://www.consumerfinance.gov/rules-policy/regulations/1026/24/#c>

<sup>3</sup> *Id.*

## Conclusion

Small businesses represent the dreams and labor of millions of New Yorkers. Overall, we are very pleased with the Department's draft rule to protect business owners from deceptive lending practices. We hope the above comments are helpful as DFS proceeds with this rulemaking. We thank DFS for leading the nation with strong commercial financing regulations that will protect small business borrowers and enable interstate harmonization.

Sincerely,

1. Responsible Business Lending Coalition  
Members include: Accion Opportunity Fund, Community Investment Management, Funding Circle, LendingClub, Opportunity Finance Network, Opportunity Fund, Small Business Majority, and the Aspen Institute
2. 3Es Consulting Group
3. Accion Opportunity Fund
4. American Fintech Council
5. Anchor Financial Services
6. The Blackwall Street Corporation
7. Bluez Oils Inc
8. Business Outreach Center Capital
9. Business Outreach Center Network
10. Business Center for New Americans
11. The Business Council of Westchester
12. CAMEO Network
13. Capital CFO
14. CBR Improvement Strategies, LLC
15. Center for NYC Neighborhoods
16. CMR Communications
17. Community Capital New York
18. Community Development Venture Capital Alliance
19. Community Investment Management
20. Community Loan Fund of the Capital Region
21. The Dutch Pot LLC
22. Endorphin Advisors LLC
23. Fresh Neighborhood Market
24. Funding Circle
25. Greater Jamaica Development Corp
26. Guilderland Chamber of Commerce
27. Habitat for Humanity NYC Community Fund
28. The Hair Hive
29. Harlem Entrepreneurial Fund
30. Head Heart Hands Consulting LLC
31. Hill & Markes

Responsible Business Lending Coalition  
<http://www.borrowersbillofrights.org/>

32. Hot Bread Kitchen
33. Human Scale Business
34. Jefferson Economic Development Institute
35. Justine PETERSEN
36. La Fuerza Unida CDC
37. LendingClub
38. Leviticus Fund
39. Lighter Capital
40. Lockdown Security Services
41. Michael Roach Creative
42. MultiFunding
43. National Urban League
44. Nav
45. New York State CDFI Coalition
46. NextStreet
47. Opportunity Finance Network
48. Oswego County Federal Credit Union
49. PathStone Enterprise Center
50. Pursuit
51. Small Biz Silver Lining
52. Small Business Majority
53. SMB Intelligence
54. Spring Bank
55. StreetShares
56. Tech Valley Shuttle
57. This Week in Fintech
58. TruFund Financial Services, Inc.
59. United Way of the Greater Capital Region
60. Upstate Minority Economic Alliance (UMEA)
61. UpState New York Black Chamber of Commerce
62. Woodstock Institute

### Addendum: RBLC comment to CA DFPI in response to October 2021 modifications.

Attached is RBLC's comment letter to the California DFPI, in response to DFPI's third modifications published on October 12, 2021. We included our comment to DFPI for your awareness, as we understand that DFS is working in coordination with DFPI. Please note that RBLC's recommendations to DFPI are irrelevant for DFS, because DFS has already addressed these matters in the proposed rule.

October 27, 2021

**RE: NOTICE OF THIRD MODIFICATIONS TO PROPOSED REGULATIONS UNDER DIVISION 9.5 OF THE CALIFORNIA FINANCIAL CODE PRO 01/18**

Commissioner of Financial Protection and Innovation  
Attn: Sandra Sandoval, Regulations Coordinator  
300 South Spring Street, 15th Floor  
Los Angeles, CA 90013  
Attention: Charlie Carriere and Jesse Mattson  
Via electronic mail: [regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov), [charles.carriere@dfpi.ca.gov](mailto:charles.carriere@dfpi.ca.gov), [jesse.mattson@dfpi.ca.gov](mailto:jesse.mattson@dfpi.ca.gov)

Dear Mr. Carriere and Mr. Mattson:

The Responsible Business Lending Coalition and the California Association for Micro Enterprise Opportunity would like to thank the Department of Financial Protection and Innovation (“DFPI”) for its publication of the third modification to commercial disclosure regulations to implement Senate Bill 1235.<sup>1</sup> Since the publication of this modification, New York Department of Financial Services has released two modifications to its proposed regulations to implement its commercial disclosure regulations.<sup>2</sup>

Our comments focus on creating harmonization between California and New York law so that providers can use one disclosure nationwide, which would empower all small businesses in this country with truth-in-lending disclosures.

**Remove State Specific Language**

The disclosures required by DFPI under this regulation can be a model for the nation, quite literally: We anticipate firms may seek to use a single disclosure that complies with DFPI regulations across all 50 states. However, the required reference to “California Law” in the text of the required disclosure would prevent this same disclosure from being used

---

<sup>1</sup> State of California Department of Financial Protection and Innovation, “CALIFORNIA CODE OF REGULATIONS TITLE 10, CHAPTER 3 Third Modifications,” Oct. 12, 2021. <https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/10/2021-10-12-SB-1235-Regulations-For-Publication.pdf>

<sup>2</sup> New York State Department of Financial Services, “Proposed Financial Services Regulation New 23 NYCRR 600: Disclosure Requirements for Certain Providers of Commercial Financing Transactions” [https://www.dfs.ny.gov/system/files/documents/2021/10/rp\\_23nycrr600\\_text\\_202110.pdf](https://www.dfs.ny.gov/system/files/documents/2021/10/rp_23nycrr600_text_202110.pdf)  
New York State Department of Financial Services, “Pre-Proposed Regulation - Financial Services: Draft of Proposed 23 NYCRR 600: Disclosure Requirements for Certain Providers of Commercial Financing Transactions” Accessed via Wayback Machine on Oct. 27, 2021. [https://web.archive.org/web/20210929194535/https://www.dfs.ny.gov/system/files/documents/2021/09/pre\\_proposed\\_fs\\_sect600.pdf](https://web.archive.org/web/20210929194535/https://www.dfs.ny.gov/system/files/documents/2021/09/pre_proposed_fs_sect600.pdf)

outside of California's borders. (Small business lenders will not show small businesses in Texas or New York a disclosure that says it is required by "California Law.")

We recommend striking "California Law" and replacing it with "Applicable law" in §901 General Requirements (2) in order to allow the use of the disclosure nationwide and to also conform with New York proposed regulations under Section 600.05 General formatting requirements (b).

### **Accuracy and Accountability**

To properly regulate providers that opt in to use estimated APR and ensure accuracy in their disclosures to small businesses, DFPI should implement reporting regulations that require providers to report annually:

- (1) for each commercial financing transaction undertaken as defined by the regulations, the estimated annual percentage rates disclosed to the recipient and actual retrospective annual percentage rates of completed transactions;
- (2) the annual mean of all differences between the estimated annual percentage rates disclosed to the recipient and actual retrospective annual percentage rates of completed transactions, which mean shall be reported both weighted by financing amount, and unweighted;
- (3) a statement of any unusual and extraordinary circumstances impacting the provider's deviation between estimated and actual annual percentage rate; and
- (4) such other information prescribed by the Commissioner as necessary or appropriate for the purpose of making a determination of whether the deviation between the estimated annual percentage rate and actual retrospective annual percentage rates of completed transactions was reasonable.

We would refer DFPI to "Section 600.22 Reporting" of New York's proposed regulations for the exact language and reporting requirements.

If DFPI is unable to include this critical reporting through these regulations following from SB 1235, it should require this reporting in the rulemaking taking place on small business data collection following from AB 1864.

### **Effective Date and Compliance Date**

We recognize and fully appreciate that the implementation of these disclosures can take time for providers to properly implement and therefore we ask DFPI to be consistent with New York's proposed regulations: that the compliance date be extended to six months from the effective date of the regulations.

We thank the DFPI and staff for their work on this important regulation: ensuring that it meets the intent of SB 1235 and is flexible enough to promote innovation and take into account various practices and changes in the small business lending industry.

Sincerely,

The Responsible Business Lending Coalition

California Association for Micro Enterprise Opportunity

Responsible Business Lending Coalition  
<http://www.borrowersbillofrights.org/>