

New York Passes Small Business Finance Disclosure Law

July 30, 2020 | [Katherine C. Fisher](#)

On July 23, 2020, the New York legislature passed [A10118A/S5470B](#) requiring disclosures in various commercial financing transactions, including loans, merchant cash advances ("MCA"), and factoring transactions (the "Disclosure Bill"). The Disclosure Bill will now be sent to the governor, who can either sign or veto it.

Required Disclosures

The Disclosure Bill requires different disclosures depending on the type of transaction. However, in each case the provider must disclose an "APR" calculated in accordance with the federal Truth in Lending Act and Regulation Z. The APR disclosure was included over the objection of industry groups and certain legislators who noted that TILA and Regulation Z do not apply to commercial finance. In addition, an APR applied to a transaction with no fixed term, such as factoring and MCA, will be inaccurate and misleading. California has been unable to implement a similar proposed APR disclosure despite years of regulatory effort.

For sales-based financing, which includes MCAs, the disclosure requirements include:

- Total amount of financing;
- Disbursement amount, if different from the total amount of financing;
- Finance charge;
- "APR" based on the estimated term of repayment and projected periodic payment amounts, which must be based on a calculation of the merchant's projected sales volume;
- Total repayment amount;
- Estimated term;
- Payment amounts, including the projected average payments per month, and differing requirements for fixed and variable payments;
- Description of all fees not included in the finance charge;
- Disclosures relating to payoff or refinancing; and

- Collateral and security interest requirements.

The Disclosure Bill specifies two different methods of calculating the projected sales volume and requires the provider to notify the Superintendent of the Department of Financial Services ("DFS") of which method they intend to use for all transactions.

The Disclosure Bill also imposes disclosure requirements on repeat financing transactions from the same provider. Under certain circumstances, a statutory disclosure is required, as follows:

"Does the renewal financing include any amount that is used to pay unpaid finance charge fees, also known as double dipping? Yes [enter amount]. If the amount is zero, the answer would be No."

Industry had objected to the term "double dipping," as the term does not provide any additional clarity and is jargon with negative connotations.

Additional Department of Financial Services Powers

The Disclosure Bill authorizes the DFS to promulgate rules and regulations to effectively administer the Disclosure Bill. Those regulations will include, at least, rules regarding:

- Calculation of required disclosures;
- Formatting of disclosures, which may include requirements or "approving adequate forms;" and
- Defined terms.

Notably, the authorization to create rules is broad and, arguably, is not limited to disclosures. As a result, the Disclosure Bill could have the effect of increasing DFS authority over commercial finance in general.

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