October 1, 2021

Department of Financial Services
George Bogdan
1 State St
New York, New York 10004
george.bogdan@dfs.ny.gov
VIA ELECTRONIC TRANSMISSION

RE: Disclosure Requirements for Certain Providers of Commercial Financing Transactions

Dear Mr. Bogdan,

Small businesses are the anchor of the vibrant communities across New York state. They represent the dreams and labor of thousands of hard-working New Yorkers. As we all know too well, COVID-19 gutted many Main Street storefronts and livelihoods, leaving empty holes in its wake. Pandemic small business aid struggled to reach its intended recipients, especially the hardest-hit businesses owned by women and people of color. High-cost and non-transparent financing providers took advantage of this desperate time with promises of fast, easy cash. Because the federal Truth in Lending Act does not extend to commercial financing, they were able to obscure the true cost of their financing by quoting misleading pricing terminology and "rates" that were not interest rates. The ensuing confusion makes it challenging for borrowers to compare financing offers and make informed decisions.

The consequences for small businesses of this lack of pricing transparency in financing can range from simply over-paying for financing, to falling into an unaffordable debt trap and closing down, inevitably harming the business owners and their family, employees, and communities.

Amid this economic devastation, New York took action to establish the strongest small business financing transparency protections nationwide by passing the Small Business Truth in Lending Act, S5470B. The New York State Department of Financial Services ("Department" or "DFS") may become the first regulator to finalize regulations for a small business truth-in-lending law. DFS's regulations will empower entrepreneurs with the transparent disclosure they need to secure affordable financing and successfully navigate the economic uncertainty ahead.

The Responsible Business Lending Coalition ("RBLC"), the New York State CDFI Coalition, and the UpState New York Black Chamber of Commerce congratulate the Department for taking swift action to implement these critical small business financial protections. The RBLC is the leading voice nationally on small business financial protection issues, and is the only coalition of nonprofit community development financial institutions, private-sector lenders, and small business organizations advocating together on these issues. The New York State CDFI Coalition is an organization of over 80 New York-based CDFIs that are committed to improving the lives of underserved people and communities in the state. The UpState New York Black Chamber of Commerce is a

certified member of the U.S. Black Chamber dedicated to advocating and expanding the impact of Black- and minority-owned businesses throughout upstate New York.

We are grateful for this opportunity to comment on the Department's trailblazing efforts to protect small businesses. The draft rule is strong and takes great care to promote inter-state harmonization. We recommend several changes to the proposed rule for the benefit of New York small businesses, local communities, financing providers, and the Department itself. We also include an economic impact analysis that illustrates expected benefits to small businesses.

In the following letter, we explain our recommendations and economic findings in more detail.

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Section 1: Impacts on Small Businesses

We estimate that DFS' commercial financing disclosure regulations will bring billions of dollars in annual benefits to New York small businesses, through direct and indirect cost savings. Using data from the Federal Reserve's Small Business Credit Survey, we project that the regulations will save an estimated **75,000 small businesses up to $8.7 billion in economic benefit annually, including $1.75 billion in direct financing charges and fees per year** by enabling transparent cost comparison. Our estimates include the number of

financing applicants who are price-sensitive and apply with high-cost and less-transparent financing providers. These applicants are most likely to select a lower-cost financing option if presented with transparent disclosures upfront.

We also predict that DFS' regulations will benefit small businesses indirectly by preventing the secondary harms associated with high-cost, non-transparent financing. Secondary harms include: 1) the business owners' need to spend time searching for affordable credit providers that could refinance high-cost debt onto more affordable terms and 2) premature business closures and lost future revenues due to unaffordable financing.

We expect that the regulations will help as many as 75,000 small business owners avoid up to $91 million per year in opportunity costs of their time spent applying to refinance debt. Our member organizations frequently meet business owners who desperately seek to refinance high-cost debt with unsustainable payments, in order to avoid default. We monetized this economic impact by multiplying the total estimated population of price-sensitive businesses that apply for high-cost, non-transparent financing by the 26 hours business owners typically spend applying for credit and the average hourly business owner wage of $27.[1]

In addition, small business owners may save up to $6 billion annually by avoiding premature business closures that would have been caused by unaffordable debt. Some of the business owners described above will find an affordable financing provider that is able to approve them for a debt refinance. Others will have taken on too much debt to be approved for a refinance and eventually default on their debt obligations, leading to bankruptcy and business closure. If not for the high-cost, non-transparent financing they had taken out, these businesses would have continued operating and earning revenue for years into the future.

We estimated these savings by assuming that ten percent of price-sensitive online loan applicants would have risked closure by taking on a high-cost credit product. Of that ten percent, we assume that fifty percent would have otherwise remained in business for the average small business life cycle of 7.5 years, if not for the unaffordable credit product forcing the business into bankruptcy.[2] Average annual revenues for employer firms with under 20 employees and nonemployer firms range from $47,000 to over $1.6 million.[3] We multiplied the estimated number of at-risk firms by average revenues to estimate the total annual value of avoided business closures after DFS' regulations take effect.

Direct and Secondary Benefits of S5470B Implementation for Small Businesses

Economic Benefit	**Description**	**Annual Savings**
Switching savings	An estimated 75,000 New York small businesses may select lower-cost financing as a result of transparent disclosures, enabling them	Up to $1.75 billion

[1] Federal Reserve Bank of New York, "Key Findings: Small Business Credit Survey, Q4 2013," 2013. https://www.newyorkfed.org/medialibrary/interactives/fall2013/fall2013/files/full-report.pdf; ZipRecruiter, "Business Owner Salary," March 9, 2021. https://www.ziprecruiter.com/Salaries/Business-Owner-Salary

[2] Nav, "Small Business Statistics," January 26, 2021. https://www.nav.com/small-business-statistics/

[3] Fundera, "Small Business Revenue Statistics (2021): Annual Sales and Earnings," December 16, 2020. https://www.fundera.com/resources/small-business-revenue-statistics

	to save on finance charges and fees.	
Avoided opportunity costs: time spent refinancing high-cost debt	Up to 75,000 price-sensitive loan applicants may need to refinance out of costly debt after struggling to keep up with higher-than-anticipated repayment schedules that were not clearly disclosed upfront. These business owners then must take time away from running their businesses to apply with new credit providers, complete paperwork, submit supporting documentation, etc.	Up to $91 million
Preservation of future business revenue by avoiding premature, debt-induced business closures	An estimated 3,600 small businesses may be forced to close their doors unexpectedly as a result of unsustainable debt draining their cash flow. If not for high-cost debt, these businesses may have survived and earned revenue over the average small business life cycle of 8.5 years.	Up to $6 billion
Total		*Up to $8.7 billion*

This does not include the potential savings to small businesses that could result from price competition driving prices down, once prices begin to be transparently disclosed. This would benefit not only the 75,000 New York small businesses that may select lower-cost financing as a result of transparent disclosures, but even small businesses that would not change their financing choices and simply benefit from price reduction caused by those who comparison shop.

In sum, we predict that **DFS will save New York small businesses up to $8.7 billion per year after implementing strong S5470B regulations**. We provide the below recommendations intended to maximize the regulation's benefits to small businesses and promote inter-state harmonization.

Section 2: Expand the Draft Rules to Include Provisions of S5470B that are the Strongest in the Nation

There are four key provisions in the Small Business Truth in Lending Act that set a higher standard of financial protection in New York than appears in California's small business disclosure law, SB 1235, and its corresponding draft regulations. DFS's draft rules reflect care taken for interstate harmonization, including with the rules under California SB 1235. We encourage DFS to also incorporate these four provisions of New York law that set a higher bar than California's regulations.

Recommendation 1: Include S5470B's prohibition of misleading pricing metrics

The Small Business Truth in Lending Act includes an important provision to prohibit use of several misleading ways prices are described in the market today. This prohibition applies even outside of the disclosure "box" mandated by the law. Section 810 of of S5470B reads:

> "§ 810… IF OTHER METRICS OF FINANCING COST ARE DISCLOSED OR USED IN THE APPLICATION PROCESS OF A COMMERCIAL FINANCING, THESE METRICS SHALL NOT BE PRESENTED AS A "RATE" IF THEY ARE NOT THE ANNUAL INTEREST RATE OR THE ANNUAL PERCENTAGE RATE. THE TERM "INTEREST", WHEN USED TO DESCRIBE A PERCENTAGE RATE, SHALL ONLY BE USED TO DESCRIBE ANNUALIZED PERCENTAGE RATES, SUCH AS THE ANNUAL INTEREST RATE."[4]

Federal Reserve research has established that certain pricing metrics used by financing companies are misunderstood by borrowers to be the interest rate or APR. This includes metrics such as "simple interest," "fee rate," and "factor rate." A 2018 Federal Reserve study describes the confusion:[5]

> ■ **Participants were confused by terminology used to describe all three products**. For Product A, "repayment percentage options" was a confusing term for some participants who thought this was an interest rate, rather than a share of sales. For Product B, participants most commonly conflated "simple interest" with the APR. In addition, the phrasing of the statement "this rate *excludes* any fees, *including* a one-time origination fee of 3%" (emphasis added) perplexed some participants. For Product C, the term "factor rate" was the main source of confusion for a majority of participants who stated they had not heard it before.

This research found that small businesses often understood any number described in percentage terms to be the interest rate or APR. These other descriptions of cost appear much lower than the actual interest rate or APR, and are used to mislead small businesses into believing that high-cost financing is less expensive than it is.

A 2019 follow-up study by Federal Reserve researchers found that "non-standard terminology" used by some alternative lenders "proved challenging for focus group participants trying to compare online offerings with traditional credit products."[6] The following table from that study illustrates the severity of this confusion. In the left column, the "non-standard terminology" is displayed. As you can see below, the price number presented on

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[4] Financial Services Law (FIS) CHAPTER 18-A, ARTICLE 8, Section 810. https://www.nysenate.gov/legislation/laws/FIS/A8

[5] Lipman and Wiersch, Federal Reserve Board of Governors, "Browsing to Borrow: 'Mom & Pop" Small Business Perspectives on Online Lenders," June 2018. https://www.federalreserve.gov/publications/files/2018-small-business-lending.pdf

[6] Lipman, Barbara and Wiersch, Anne Marie, Board of Governors of the Federal Reserve System, "Uncertain Terms: What Small Business Borrowers Fund When Browsing Online Lender Websites," Dec 2019. https://www.federalreserve.gov/publications/files/what-small-business-borrowers-find-when-browsing-online-lender-websites.pdf

the left is markedly lower than the actual APR noted in the right column. For example, a "9% simple interest" may be understood to represent a 9% interest rate, but in fact carries an APR of approximately 46%.[7]

Table 3. Estimated APRs for select online products

Rate advertised on website	Product details	Estimated APR equivalent
1.15 factor rate	• Total repayment amount $59,000 • Fees: 2.5% set-up fee; $50/month administrative fee • Term: none (assume repaid in six months) • Daily payments (assume steady payments five days/week)	Approximately 70% APR
4% fee rate	• Total repayment amount $56,500 • Fee rate: 4% (months 1–2), 1.25% (months 3–6) • Fees: none • Monthly payments • Term: six-month term	Approximately 45% APR
9% simple interest	• Total repayment amount $54,500 • Fees: 3% origination fee • Weekly payments • Term: six-month term	Approximately 46% APR

Source: Authors' calculations, based on product descriptions on company websites.

Each of these "non-standard" metrics in the left column is a different name for the same metric. It is a financing charge as a fraction of the financing amount. A more common term for this metric is a "fee."

The first example in the table above, the "1.15 factor rate," is more commonly understood as a 15% fee. The second example, a "4% fee rate," would be more commonly understood as a 4% fee charged monthly. The third example, "9% simple interest," is a 9% fee, and bears little resemblance to the interest rate, which would be 34%. (Combining that 34% effective interest rate with the 3% origination fee produces the 46% APR).

Section 810's prohibition of these misleading characterizations of price applies any time "METRICS OF FINANCING COST ARE DISCLOSED OR USED IN THE APPLICATION PROCESS OF A COMMERCIAL FINANCING." This would apply any time financing costs are disclosed, from disclosure in advertising to portions of the application process where price is referenced, including outside of the mandated "box" disclosure.

[7] *Id.*

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

Another provision of Section 810 requires APR to be disclosed throughout the application process at any time price or financing amount are stated, including outside of the required disclosure "box":

> "§ 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".[8]

This additional disclosure of APR would come up, for example, during the application process after the "box" has already been disclosed.

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."[9]

However, Section 810 of S5470B 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 compliant with the requirements of Section 810 described in Recommendation 2. 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."[10]

By addressing Section 810 in the rules, the Department may help ensure that small business customers are able to make informed price comparisons based on APR throughout the application process, including outside of the moments when the full form disclosure is being presented.

Recommendation 3: Include S5470B's required disclosures of "double dipping" in renewal financing

The Small Business Truth in Lending Act requires additional disclosures to take place for financing renewals. These are intended to address an abusive practice called "double dipping" whereby the borrower is essentially double-charged in a confusing way.

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[8] Financial Services Law (FIS) CHAPTER 18-A, ARTICLE 8, § 810, "Additional Information." https://www.nysenate.gov/legislation/laws/FIS/810

[9] Regulation Z, § 1026.24(c), available at: https://www.consumerfinance.gov/rules-policy/regulations/1026/24/#c

[10] *Id.*

Double dipping occurs when a small business refinances or renews their financing with their current provider, and the proceeds from the new loan or advance is used to pay off the balance from the previous loan or advance including fixed-fee charges that are not proportionately reduced, even though the financing was forced to be prepaid. In this way, the provider charges the borrower the same fixed fee twice for the balance that was outstanding. The fixed fee is charged once as the outstanding balance is paid off, and then a second time for the same capital in the renewal.

This can be difficult to follow, which is why many small business owners may not realize they are being double charged. The following still image from video produced by a merchant cash advance company that does not employ double dipping suggests how confusing the hidden charge can be. The short video linked in the footnote below may be even more illustrative.[11]

Financial Services Law (FIS) CHAPTER 18-A, ARTICLE 8, § 808, "Disclosure requirements for renewal financing" includes the following language to alert borrowers who may be "double dipped:"

> "§ 808. Disclosure requirements for renewal financing. If, as a condition of obtaining the commercial financing, the provider requires the recipient to pay off the balance of an existing commercial financing from the same provider, the provider must disclose:
>
> (a) The amount of the new commercial financing that is used to pay off the portion of the existing commercial financing that consists of prepayment charges required to be paid and any unpaid interest expense that was not forgiven at the time of renewal. For financing for which the total repayment amount is calculated as a fixed amount, the prepayment charge is equal to the original finance charge multiplied by the amount of the renewal used to pay off existing financing as a percentage of the total repayment

[11] The Business Backer, "Double Dipping," September 3, 2014. https://www.youtube.com/watch?v=k62kCK5tZwo

amount, minus any portion of the total repayment amount forgiven by the provider at the time of prepayment. If the amount is more than zero, such amount shall be the answer to the following question:

"Does the renewal financing include any amount that is used to pay unpaid finance charge or fees, also known as double dipping? Yes, {enter amount}. If the amount is zero, the answer would be No."
(b) If the disbursement amount will be reduced to pay down any unpaid portion of the outstanding balance, the actual dollar amount by which such disbursement amount will be reduced."[12]

The math required in 808(a) may be confusing to read above, but is simple in practice. In the following Example A below, a small business is "double dipped" in the amount of $3,333.

Example A - A small business double dipped for $3,333

A	Financing Amount	50,000	
B	Finance Charge	10,000	
C	Total Repayment Amount	60,000	A+B
D	Amount outstanding at time renewal and prepayment is initiated	20,000	Based on time of prepayment
E	Reduction of repayment amount owed in order to avoid double dipping the customer	0	In this example, the provider charges the full financing charge depsite forcing prepayment.
F	Amount double dipped to be disclosed	3,333	B*(D/C) - E

In this case, the renewal transaction results in the recipient prepaying 1/3 of the outstanding financing, as a condition of getting the new financing. The amount of the "double dipping" charge is the 1/3 of the finance charge, because 1/3 of the financing term was not used as a result of the forced prepayment.

Some providers of sales-based financing have argued that double dipping is an inevitable result of the product structure, but the reality is that it can be avoided. Example B, below, shows how double dipping could be avoided in the same transaction, simply by forgiving or not assessing the portion of the financing charge associated with the unused portion of the financing.

[12] Financial Services Law (FIS) CHAPTER 18-A, ARTICLE 8, § 808, "Disclosure requirements for renewal financing." https://www.nysenate.gov/legislation/laws/FIS/808

Example B - The financing provider avoids double dipping the small business

A	Financing Amount	50,000	
B	Finance Charge	10,000	
C	Total Repayment Amount	60,000	A+B
D	Amount outstanding at time renewal and prepayment is initiated	20,000	Based on time of prepayment
E	Reduction of repayment amount owed in order to avoid double dipping the customer	3,333	B*(D/C) By reducing the charge, the provider avoids double dipping
F	Amount double dipped to be disclosed	0	B*(D/C) - E

This information would be an additional element of the required disclosure box, "If, as a condition of obtaining the commercial financing, the provider requires the recipient to pay off the balance of an existing commercial financing from the same provider."[13]

We believe this disclosure would be helpful to small business customers in cases where double dipping is occurring, but not helpful in cases where it is not. There may be an unnecessary compliance burden of requiring this disclosure of providers or even product categories in which double dipping never occurs. Accordingly, we suggest the most helpful implementation of this provision would be to require the disclosure of the amount required to be disclosed in § 808(a) is greater than 0.

Recommendation 4: Include required disclosure of collateral requirements

Collateral is a required financing disclosure term in New York's Small Business Truth in Lending Act, although it does not appear in California's draft rules. The collateral requirements appear in § 803(i) for sales-based financing,§ 804(i) for closed-end financing, § 805(i) for open-ed financing, § 806(f) for factoring financing including "a description of the receivables purchased," and § 806(f) for other forms of financing.

Section 3: Recommendations for interstate harmonization at the highest standard of protection for small businesses

In 2018, California passed a state small business truth-in-lending act, SB1235. DFS wisely sought interstate harmonization by drawing on language from the proposed rule released by California's Department of Financial Protection and Innovation ("DFPI") in April 2021. We applaud DFS' coordination efforts and encourage the Department to incorporate the changes that DFPI made in the updated August 2021 rule, with the following two exceptions:

[13] Financial Services Law (FIS) CHAPTER 18-A, ARTICLE 8, § 808, "Disclosure requirements for renewal financing." https://www.nysenate.gov/legislation/laws/FIS/808

1. Regulation language should not inadvertently delay disclosure
2. Formatting requirements should permit additional flexibility

The Responsible Business Lending Coalition has shared these critical recommendations with DFPI in the August 2021 comment period, and hopes that DFPI's upcoming revisions to California's regulations reflect these concerns.[14]

Recommendation 5: A New York-compliant disclosure should be usable nationwide

New York's Small Business Truth in Lending Act is a model for the nation, and a disclosure that complies with these regulations should be usable nationwide. There is no occasion where California statute sets a higher bar for small business financing disclosure transparency compared to New York's S5470B, but there are several occasions discussed above where New York's standard sets a higher bar than California's. Thus a New York-compliant disclosure should be usable in California and nationwide.

If financing providers must use different disclosure forms in different states, this would introduce complexity in the operations of financing, which otherwise may be fairly uniform nationwide. This would create unnecessary compliance burden and cost in the financing industry, and may not produce corresponding benefits for small business owners.

This recommendation considers not only California's SB1235, but also potential future small business truth in lending laws, which have been introduced in at least five other states in the last year.

In order to enable a New York-compliant disclosure to be usable nationwide, we offer two suggestions:

1. Continue DFS's laudable coordination with California's DFPI, seeking that a disclosure that complies with DFS's regulations will also comply with DFPI's.
2. Remove any state-specific language from the proposed regulations, such as any explicit reference to New York or DFS.

Recommendation 6: Incorporate California's updates from August 2021 revision

As you may know, California's DFPI published an updated draft rule on August 9, 2021 that modifies their April 7, 2021 proposed text.[15] We encourage DFS to modify its draft regulations to adopt the latest changes made in California regulations, with two exceptions, detailed below.

[14] Please see "One letter signed by eighty seven Organizations – Responsible Business Lending Coalition and more: RE: Commercial Financing Disclosures Rulemaking, File No. PRO 01-18," August 24, 2021. https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/09/Combined-Comment-Responsible-Business-Lending-Coalition-EMAIL-and-Comment-8.24.21.pdf

[15] STATE OF CALIFORNIA, DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION, CALIFORNIA CODE OF REGULATIONS TITLE 10, CHAPTER 3 Second Modifications Modified: August 9, 2021.

Recommendation 7: Modify one phrase of California's August, 2021 revised language that could inadvertently delay disclosure until after decision making has taken place

The New York legislature's intent in passing S5470B was to enable small businesses to make informed price comparisons between the different financing options available to them. A change proposed in the August, 2021 revision of California's SB 1235 rules may be interpreted to delay the required disclosure until after the small business's decision-making process has already taken place. This certainly was not the intent of California's DFPI, or consistent with the intent of DFS or the New York legislature. The Responsible Business Lending Coalition and 86 ally organizations alerted California DFPI to this concern in the August comment period on California DFPI's regulations.[16]

This problem in DFPI's draft rules occurs in the definition that triggers when the full disclosure must take place (§2057. Definitions (a)(4)(A)).[17] The concern is that the language may be read to suggest that, if multiple options are available to a small business applicant, the disclosure need only be provided on the option the small business selects. We have included the language of concern below, with RBLC's proposed revision marked in redline:

> "§2057.(a)(4)(A)... However, if a provider simultaneously presents multiple periodic payment amounts, irregular payment amounts, or financing amounts, and rates, prices, or costs of financing (including, without limitation, any total repayment amounts) to the recipient, representing different financing offers and allows the recipient to select from among those options, then "at time of extending a specific commercial financing offer" occurs at the time that the recipient selects ~~a preferred~~ an option to consider."

We urge DFPI not to adopt the August 2021 revisions to this definition without also making this change in order to ensure that the disclosure should be available for *any offer* that a small business applicant considers, rather than only for the *single offer* the small business selects to move forward with. At that point, any disclosure would be too late.

Recommendation 8: Formatting requirements should permit additional flexibility

The required disclosure must be functional on mobile devices in order to be effective. We suggest some flexibility may also be desirable, as user experiences may develop in unanticipated ways.

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https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/08/2021-08-09-Commercial-Financing-Disclosures-Second-Modified-Text.pdf

[16] Please see "One letter signed by eighty seven Organizations – Responsible Business Lending Coalition and more: RE: Commercial Financing Disclosures Rulemaking, File No. PRO 01-18," August 24, 2021. https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/09/Combined-Comment-Responsible-Business-Lending-Coalition-EMAIL-and-Comment-8.24.21.pdf

[17] STATE OF CALIFORNIA, DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION, CALIFORNIA CODE OF REGULATIONS TITLE 10, CHAPTER 3 Second Modifications Modified: August 9, 2021. §2057. Definitions (a)(4)(A). https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/08/2021-08-09-Commercial-Financing-Disclosures-Second-Modified-Text.pdf

The prescribed table with three columns and generally eight rows may be cramped on some mobile devices with smaller screens. In these cases, it is possible that the information in each row may be better displayed with the information appearing stacked vertically, rather than laid out in rows. For example:

The APR row is currently prescribed as:

Annual Percentage Rate (APR)	15.4%	APR is the cost of your financing expressed as a yearly rate. APR includes the amount and timing of the funding you receive, interest and fees you pay and the payments you make. Your APR is not an interest rate. Your interest rate is [interest rate]. Your APR may be higher than your interest rate because APR incorporates interest costs and other finance charges.

It may be possible to display more clearly on mobile with another design, such as this:

Annual Percentage Rate (APR)	15.4%
APR is the cost of your financing expressed as a yearly rate. APR includes the amount and timing of the funding you receive, interest and fees you pay and the payments you make. Your APR is not an interest rate. Your interest rate is [interest rate]. Your APR may be higher than your interest rate because APR incorporates interest costs and other finance charges.	

We applaud DFS for the inclusion of flexibility in § Section 600.05 General formatting requirements (e)(1), which states that, "The provider may present the required disclosure in fonts and colors that are clear, complete, conspicuous, easy to compare with other disclosures, and consistent with the requirements of this Part."[18] Similar flexibility with respect to layout may also be appropriate, provided that the order of the required elements be maintained.

Similarly, font sizes larger than the prescribed sizes of "similar in size to Times New Roman 12- to 14-point font" for the columns one and two, and larger than "10- to 12-point" for column three, may be appropriate in some designs. For example, the prescribed fonts in columns 1 and 2 above appear small, compared to the available white space. We suggest the font size requirements be modified to from "similar is size to" to "not smaller than" in order to permit this flexibility.

[18] NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES, 23 NYCRR 600, DISCLOSURE REQUIREMENTS FOR CERTAIN PROVIDERS OF COMMERCIAL FINANCING TRANSACTIONS, Pre-Proposed Regulation. https://www.dfs.ny.gov/system/files/documents/2021/09/pre_proposed_fs_sect600.pdf

Recommendation 9: Establish an enforcement date

Even among financing providers already disclosing APRs and other terms transparently, the specific requirements for disclosures under these rules will differ from existing practices in the market. While these rules are laudable, needed, and sensible, it is also reasonable that some financing providers will need several months to establish compliant disclosure systems.

As of January 1st, even well-meaning financing providers will be out of compliance as they work with their legal, compliance, product, engineering, and customer service teams to establish compliant disclosure systems. Indeed, January 1st may be no more than two weeks after the publication of the final rule. Moreover, the final two weeks of December can be an especially difficult time for cross-functional work within organizations.

We suggest that DFS adopt similar transitional rules to those proposed by the Consumer Financial Protection Bureau for Section 1071.[19] Specifically, the proposed regulations should become effective on January 1, 2022 and enforcement of the rule should not begin until 6 months after the law goes into effect.

Conclusion

Thank you for this opportunity to comment. We look forward to the Department of Financial Services' finalization of these disclosures for the good of New York's small businesses.

Sincerely,

The New York State CDFI Coalition

The Responsible Business Lending Coalition

Members include: Accion Opportunity Fund, Community Investment Management, Funding Circle, LendingClub, Opportunity Finance Network, Small Business Majority, and the Aspen Institute

The UpState New York Black Chamber of Commerce

[19] Bureau of Consumer Financial Protection, Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B), § 1002.114, Proposed Rule for Comment. https://files.consumerfinance.gov/f/documents/cfpb_section-1071_nprm_2021-09.pdf