



Department of Financial Services

KATHY HOCHUL
Governor

ADRIENNE A. HARRIS
Acting Superintendent

To: Chief Executive Officers of Providers Subject to Commercial Financing Disclosure Requirements Pursuant to Article 8 of the New York Financial Services Law

Re: The Effective Date of Article 8 of the New York Financial Services Law

Dated: December 31, 2021

This letter is issued in response to inquiries the New York State Department of Financial Services (the “Department”) received regarding the timing of providers’ obligations under Article 8 of the New York Financial Services Law (the “Commercial Finance Disclosure Law” or “CDFL”). The CDFL requires companies that offer commercial financing in amounts under \$2.5 million, known as providers, to make standardized disclosures about the terms of credit.

As explained below, providers’ obligations under the CDFL do not go into effect until the Department issues the necessary implementing regulations.

The CDFL is an important tool that will significantly bolster transparency in commercial financing. However, the CFDL is also a complex law, requiring the Department to carefully evaluate when disclosures will be required, and what those disclosures should look like for various types of credit in various industries.

The Department is acting expeditiously to develop rules implementing the CDFL. Since its enactment on February 16, 2021, the Department has gathered input from interested parties, including providers and nonprofit organizations. The Department also consulted with the California Department of Financial Protection and Innovation (“DFPI”) regarding its commercial financing law. The DFPI has been working on implementing regulations since 2018 and has yet to promulgate regulations.

The Department’s regulatory rulemaking is governed by New York’s State Administrative Procedure Act (“SAPA”). SAPA requires notice-and-comment procedures to ensure that the public has a full opportunity to comment on the Department’s rulemaking. On September 21, 2021, the Department published a pre-proposal draft of the regulation on its website and received comments in response to that pre-proposal. The Department made some edits in response to those comments and published a formal proposed regulation in the New York State Register on October 20, 2021. The notice-and-comment period ended on December 20, 2022 and the Department received extensive and insightful comments from various stakeholders.

In light of the significant feedback received, the Department is carefully considering the comments received and intends to publish a revised proposed regulation for notice-and-comment early in the new year.

While the CDFL by its terms becomes effective January 1, 2022, it assigns the Department the responsibility of issuing the necessary regulations to implement the CDFL's objectives. In light of the public comments received and provider concerns about when they must comply with obligations under the CDFL, we have concluded that CDFL obligations do not arise until the Department issues final implementing regulations and those regulations take effect.

This conclusion is supported by the CDFL's statutory text and purpose, as well as SAPA requirements. Given the complexity of the disclosures required by the CDFL, we believe the Legislature intended that the Department first provide regulatory guidance regarding the standardized disclosures required to be provided under the CDFL. Waiting to commence CDFL obligations until implementing regulations are in place will ensure that the disclosures are made in a consistent, standardized fashion. This will help businesses understand the terms and conditions of the various forms of credit being offered to them, the very intent of the CDFL.

This interpretation is dependent on the unique text, purpose, and legislative history of the CDFL and is therefore not necessarily applicable to any other provision of state law.

Sincerely,

Serwat Farooq
Deputy Superintendent, Consumer Examinations
Consumer Protection and Financial Enforcement Division