

Regulatory Impact Statement for the Revised Proposed Amendment to 23 NYCRR Part 600

1. Statutory authority: Financial Services Law (or “FSL”) Sections 102, 201, 202, 301, 302 and 811.

FSL Section 102 sets forth the purpose and goals of the Financial Services Law including, as relevant, to “establish a modern system of regulation, rule making and adjudication” and to ensure “the prudent conduct of the providers of financial products and services, through responsible regulation and supervision.”

FSL Section 201 sets forth a declaration of policy for the Department of Financial Services (the “Department”) and states, as relevant, that the Superintendent shall take such actions as the Superintendent believes necessary to “foster the growth of the financial industry in New York and spur state economic development through judicious regulation and vigilant supervision.”

FSL Section 202 establishes the Superintendent of Financial Services and provides the Superintendent with broad rights, powers, duties and discretion with respect to matters under the Financial Services Law, the Banking Law, and the Insurance Law.

FSL Section 301 sets forth the powers of the Superintendent under relevant law.

FSL Section 302 sets forth the power of the Superintendent to prescribe, withdraw or amend rules and regulations involving financial products and services, effectuating and interpreting the provisions of the Financial Services Law, Banking Law, and Insurance Law, and governing the procedures to be followed in the practice of the Department.

FSL Section 811 authorizes and empowers the Superintendent to promulgate such rules and regulations as may be appropriate for the effective administration of FSL Sections 801-812.

2. Legislative objectives: To mandate disclosure requirements for certain providers of commercial financing transactions, as set forth in FSL Article 8, Sections 801-812.

3. Needs and benefits: Small businesses make up 99.8% of all New York businesses and employ four million people, or 50.2% of the private workforce. During the last financial crisis, bank loans to small businesses declined, exacerbating the credit crunch felt by small businesses. Alternative lenders, leveraging advances in technology, jumped to fill the gap and serve the small business market, creating issues unique to small business lending. There are many federal and state laws that apply to loans originated for person, family, or household purposes. The Truth in Lending Act (“TILA”) and its implementing regulation, Regulation Z, is the primary federal law regulating consumer credit. TILA requires creditors to make disclosures to borrowers regarding the cost of borrowing money over time. The intent behind TILA is to allow consumers to understand the true cost of the money they are borrowing and to facilitate easy comparison of credit terms across creditors.

The disclosures created in TILA and Regulation Z do not apply to extensions of credit primarily for a business or commercial purpose, so commercial financing providers are not required to disclose key financing terms in any standard format. FSL Article 8 seeks to create standardized disclosures for small business financings comparable to the TILA disclosures available for natural persons seeking consumer credit.

The Legislature considered it vital that business owners are afforded as much transparency as possible on how a commercial financing product will impact their business. The comprehensive disclosures required by FSL Article 8 provide business owners with the necessary information to make an informed, financially responsible decision. Standardized disclosures will also allow borrowers to compare the pricing and costs of a commercial financing among several providers.

FSL Article 8 specifies four types of financing (sales-based, closed-end, open-end and factoring) and also specifies the types of disclosures required. FSL Section 807 directs the Superintendent to identify other forms of commercial financing that are subject to the statute and promulgate disclosures based on criteria listed in FSL Section 807. FSL Section 811 specifically directs the Superintendent to develop calculation methods for any

metrics required in a disclosure, provide formats for disclosure forms, define and clarify key terms in the statute, and issue rules necessary to enforce the statute.

The statute expressly exempts (1) financial institutions (federal or state-chartered banks, federal or state-chartered trust companies, federal or state-chartered savings and loan associations, industrial loan companies, and federal or state-chartered credit unions), (2) lenders regulated under the federal Farm Credit Act, 12 U.S.C. Section 2001 *et. seq.*, (3) commercial financing secured by real property, (4) technology service providers that only provide software and support services, (5) lenders who make no more than five applicable transactions in New York in a 12-month period, (6) individual financings exceeding \$2,500,000, and (7) automobile financings.

The Legislature has mandated disclosures for commercial financing in amounts up to \$2,500,000. The comprehensive disclosure formats and calculation methods set forth in Part 600 of 23 NYCRR should provide business owners with the necessary information to make informed, financially responsible decisions about their financings. Standardized disclosures allow borrowers to compare the pricing and costs of a commercial financing among several providers.

In its revised proposal, the Department has also added a new Section 600.23. The new provision ensures that financing recipients receive proper notice when their financing contracts have been assigned to a new servicer. While Section 600.23 is not strictly required by the new disclosure statute, the Department considers it reasonably related to the purpose of the statute and Part 600.

4. **Costs:** The requirements of Part 600 do impose short term costs on providers of commercial financing. Providers will incur expenses to develop the disclosure forms required by Part 600 and adjust their compliance practices, computer systems and third-party contracts. After this initial adjustment period, the ongoing additional costs incurred by providers will not be significant. The Department believes the vast majority of these businesses already have the experience, resources and systems to comply with these requirements.

The Department does not expect to incur any additional expenses to implement Part 600.

5. Local government mandates: Part 600 would impose no new mandates on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: Providers who offer sales-based financings and use the opt-in method of calculating APR will be required to provide the Department with annual disclosures. Otherwise, all affected providers will be required to provide disclosure forms to prospective borrowers and warning notices after assignment of financing contracts. It is not anticipated that providers will need additional professional services other than those used in the normal course of their business to comply with the new required disclosures.

7. Duplication: This rule does not duplicate or conflict with any existing federal rules or other legal requirements. FSL Article 8 and Part 600 are only applicable in commercial financings when the federal TILA and Regulation Z are not applicable. Lenders regulated under the federal Farm Credit Act, 12 U.S.C. Section 2001 *et. seq.*, are expressly excluded from the scope of FSL Article 8 and Part 600.

Part 600 does affect licensed lenders regulated under Article IX, Sections 340-359, of the New York Banking Law (“NYBL”). Part 600 applies to licensed lenders who make applicable commercial financing. NYBL Section 352 instructs licensees to follow TILA disclosure standards for open-end loans. These licensees should follow Part 600 standards for applicable business loans to sole proprietors.

8. Alternatives: There are no viable alternatives to this regulation. The Department is promulgating Part 600 to comply with an expressed statutory mandate in FSL Article 8.

The Department posted a draft text of this regulation on its website for 10 days to solicit comment from small businesses that might be affected by it. The Department received eight comments. The Department then published its original proposal in the State Register on October 5, 2021. The Department accepted public comments through December 19, 2021. The Department’s new revised text incorporates numerous suggestions from industry representatives and small business advocates. Our assessment of public comments provides the

Department's analysis and reactions to those public comments. The public now has an opportunity to make new comments based on this revised proposal.

9. Federal standards: Part 600 does not conflict with TILA or Regulation Z. It seeks to create disclosure standards applicable for business financings that are not otherwise covered by federal law.

10. Compliance schedule: The Department understands that financiers and brokers will need time to adjust their practices after Part 600 is adopted. Accordingly, the compliance date for Part 600 is set at six months after the date of publication of the Notice of Adoption in the State Register.

**Statement as to Why a Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments (“RFA”) is Not Required for the Revised Proposal of 23 NYCRR 600**

A revised RFA is not required for the revised proposal of 23 NYCRR 600 because the revisions to the regulation do not require a change to the previously published RFA.

**Statement as to Why a Revised Rural Area Flexibility Analysis (“RAFA”) is Not Required for the Revised Proposal of 23 NYCRR 600**

A revised RAFA is not required for the revised proposal of 23 NYCRR 600 because the revisions to the regulation do not require a change to the previously published RAFA.

Statement as to Why a Revised Job Impact Statement (“JIS”) is Not Required for the Revised Proposal of 23  
NYCRR 600

A revised JIS is not required for the revised proposal of 23 NYCRR 600 because the revisions to the regulation do not require a change to the previously published statement explaining why a JIS was not necessary.