

Finance Alert

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New York Commercial Finance Law Requires Providers to Make New Disclosures At Time of Offer

Commercial financing providers that are subject to the New York Commercial Finance Disclosure Law (CFDL) must now make certain disclosures when extending financing offers to small businesses under a [new regulation](#). The regulation, which took effect on Aug. 1, is intended to improve fairness and transparency in the commercial financing process. The new regulation aims to standardize disclosures for certain commercial financing transactions in order to help businesses and individuals better understand and compare the terms of different offers, the DFS said in a Feb. 1 [statement upon adopting the regulation](#). Under the regulation, lenders must give these standardized disclosures to potential borrowers when the financing offer is extended.

The regulation prescribes how lenders should calculate finance charges and annual percentage rates. It also outlines the formatting requirements for disclosures required for various types of financing, including:

- Sales-based financing
- Closed-end financing
- Open-end financing
- Factoring transaction financing
- Lease financing
- General asset-based financing

The new disclosure regulation applies to commercial financing recipients that are principally directed or managed from New York, and providers may rely on the recipient's written representation with respect to jurisdiction. The CFDL does contain a number of specific exemptions, including commercial financing transactions



over \$2.5 million and commercial financing transactions that are secured by real property. Financial institutions and persons that make no more than five commercial financing transactions in New York in any 12-month period are also exempt.

For each violation of the CFDL, DFS can levy a civil penalty of up to \$2,000 or up to \$10,000 for a “willful” violation. Under the CFDL, DFS may seek additional relief, including restitution or a permanent or preliminary injunction on behalf of any recipient affected by the violation. The regulation does allow lenders to correct any good faith errors or inaccuracies within 60 days of discovery.

Although the DFS describes the CFDL as mandating “standardized disclosures,” and the new regulation outlines specific requirements for disclosures (including the order of disclosures and font size), the DFS has not produced any template or guide that commercial lenders can use or rely on as a safe harbor. For the moment, individual lenders and the lending industry must translate the various requirements into the disclosures they plan to use, which could result in significant variations based on how different lenders interpret the requirements in the regulation.

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As the new disclosure rules are implemented in the coming months, questions are sure to arise, particularly regarding the DFS' priorities and how it plans to enforce the regulation. Loeb & Loeb's [Financial](#) Services team is here to discuss any concerns and answer questions.

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