

## **Alert** | Financial Regulatory & Compliance



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### **New York Set to Join the Fray: NYDFS Finalizes Commercial Financing Disclosure Regulation**

#### **Go-To Guide:**

- On Feb. 1, 2023, the New York Department of Financial Services adopted final regulations implementing New York’s Commercial Financing Disclosure Law.
- The final regulations contain detailed requirements for the content of the required commercial financing disclosures.
- Following the adoption of the final regulations, the presumptive compliance deadline for New York’s Commercial Financing Disclosure Law is Aug. 1, 2023.

New York is now poised to impose Truth-in-Lending-like disclosure obligations on various types of commercial financing. On Feb. 1, the New York Department of Financial Services (NYDFS) adopted final regulations implementing [S.B. 5470](#) and [S.B. 898](#) (collectively, the “New York Commercial Financing Disclosure Law” or “NYCFDL”). Though effective as of Feb. 1, the final regulations provide a six-month grace period for those subject to the NYCFDL to comply, with compliance required by Aug. 1, 2023.

The NYCFDL requires providers of “commercial financing” to provide prescriptive disclosures to “recipients” of commercial financing transactions in amounts of \$2.5 million or less. Under the NYCFDL, “commercial financing” includes:

- Sales-based financing (*e.g.*, merchant cash advances);
- Closed-end financing;
- Open-end financing;
- Factoring transaction financing;
- Lease financing;
- General asset-based financing; and
- A “catch-all” category for financing that otherwise meets the criteria of “commercial financing.”

New York’s newly adopted regulations clarify that the NYCFDL’s requirements only apply to recipients whose business is “principally directed or managed from New York,” and allows providers to rely on any written representation by a recipient as to whether the recipient is principally directed or managed from the state of New York. Beyond that, the regulations include detailed requirements for what commercial financing disclosures must include for each type of covered commercial financing.

### **Our Take**

With a compliance deadline in sight, New York is set to join California, Utah, and Virginia in requiring disclosures for commercial financing. Prior to the enactment of commercial financing disclosure laws in these states, prescriptive disclosures were generally only required for credit transactions with consumer (and not businesses). Various state and federal laws require disclosures for consumer credit transactions, including the Truth-in-Lending Act (TILA) and its implementing regulation (“Regulation Z”), which have the stated purpose of “promot[ing] the informed use of consumer credit by requiring disclosures about its terms and costs.” The recent laws in California, New York, Utah, and Virginia look to extend similar protections to commercial financing transactions, especially those that, based on their amount, are likely to include small businesses. We expect other states to consider adopting this trend.

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