

## New York State Department of Financial Services Adopts Updated Regulations for Disclosure Requirements for Commercial Financings

February 7, 2023

The much anticipated updated regulations for disclosure requirements for commercial financing in New York have been adopted by the New York Department of Financial Services (“NYDFS”). On February 1, 2023, [NYDFS announced](#) that it has adopted [new regulations](#) (“NY Regulations”) relating to [disclosure requirements](#) for commercial financings under [Article 8 of the New York Financial Services Law](#) (the “NY Commercial Finance Disclosure Law”).

The NY Commercial Finance Disclosure Law which codified [New York SB 5470](#) requires certain commercial lenders that provide financings of \$2.5 million or less to make certain disclosures to potential recipients of commercial financing, at the time a specific offer of financing is extended to such recipient. In connection with the release of the NY Regulations, NYDFS has provided explanations of certain changes in its [Assessment of Public Comments for Revised Proposed 23 NYCRR 600](#) (“Assessment of Public Comments”).

### Exemption for Majority Owned Subsidiaries of Banks and Credit Unions

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Of particular note is that NYDFS has expanded the term “financial institution” in Section 801(f) of the NY Commercial Finance Disclosure Law to include “any corporation, limited liability company, partnership, joint venture, trust or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by a financial institution” so as to exempt all majority owned subsidiaries of banks and credit unions from the scope of and obligations under the NY Commercial Finance Disclosure Law (See Section 802(a) of the NY Commercial Finance Disclosure Law).

### Applicable to Recipients Residing in, or with Businesses Principally Directed or Managed in, the State of New York

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NYDFS has revised Section 600.24 of the NY Regulations so that the obligation to provide any disclosures under the NY Commercial Finance Disclosure Law only applies if the recipient’s business is principally directed or managed from the state of New York, or, in the case of a natural person, the recipient is a legal resident of the state of New York.

### Broker Compensation Disclosures

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The NY Regulations have been revised to remove broker compensation from the disclosure forms (except under Section 600.17 with respect to brokerage fees as prepaid finance charges), but if the commercial financing involves a broker, the provider must inform the recipient, in writing, of how, and by whom, the broker will be compensated for the broker’s role in the transaction (See Section 600.21(f) of the NY Regulations). In its Assessment of Public Comments, NYDFS explains that “[t]his general provision does not specify a form of disclosure. Financers have the discretion to explain broking fees, in writing, so long as their disclosures are accurate.”

### Timing for Disclosure of APR

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NYDFS has revised Section 600.1 and Section 600.3 of the NY Regulations so that a provider must state an APR when the provider states a rate of finance charge or a financing amount to a recipient during an application process for commercial financing and after the quotation of a specific commercial financing offer.

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## Electronic Signatures

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NYDFS has revised Section 600.5 and Section 600.18 of the NY Regulations so that recipients may provide electronic signatures on disclosures prior to consummating a commercial financing, and a digital signature may be affixed by the recipient by any means that is compliant with the New York Electronic Signatures and Records Act, State Technology Law sections 103-109 (“ESRA”), including an “Accept” button or checking a digital box acknowledging agreement, provided the financier provides to the recipient the date stamp and receipt required by sub-section 600.5(j) of the NY Regulations.

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## Payments in Relation to Notice of Assignment

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NYDFS has completely replaced Section 600.23 of the NY Regulations (previously relating to “notice of transfer of servicing”) to be consistent with UCC section 9-406, so that a recipient may continue to make payments to its original obligee before receiving notice of an assignment.

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## Effective Date and Compliance Date

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Although the NY Commercial Finance Disclosure Law became effective on January 1, 2022, Section 600.25 of the NY Regulations provides that the NY Regulations take effect upon publication of the [Notice of Adoption](#) in the State Register (*i.e.*, February 1, 2023) and the compliance date for the NY Regulations is six months after the date of publication of the Notice of Adoption in the State Register. This means the disclosure obligations under the NY Commercial Finance Disclosure Law will become effective on August 1, 2023.

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## For More Information

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If you would like further information concerning the matters discussed in this article, please contact Juliet Huang, Barbara Meeks, Tobias Moon, or the Chapman attorney with whom you regularly work:

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