

New York Department of Financial Services Issues Regulations Regarding Commercial Finance Disclosures

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The State of New York passed a law in December 2020 – the Commercial Finance Disclosure Law (“CFDL”), with an effective date of June 2021 – that prescribed required disclosures for commercial finance transactions that are \$2,500,000 or less. The required disclosures are similar in style to those required for *consumer* financial services, but have specifics that are quite different from the federal Truth In Lending Act (“TILA”). Accordingly, the New York Department of Financial Services (“NY DFS”) finally [published regulations](#) implementing the law. In particular, the regulations clarified the available exemptions from the law’s requirements, which include:

- Financial institutions, including federally- and state-chartered banks, credit unions, industrial loan companies;
- Technology services providers providing financing for their products and services, as long as they have no interest in the financing;
- Real-estate secured financing;
- Leases (as defined in the UCC); and
- Providers that make no more than five (5) annual transactions in a rolling 12-month period.

In addition, if the transaction is covered by TILA, then the CFDL does not apply. Importantly, however, the NY DFS did not extend that exemption to cover commercial transactions that provide TILA-compliant disclosures, which has been a popular strategy for small business lenders to appease the Consumer Financial Protection Bureau and the Federal Trade Commission.

When the CFDL does apply to a commercial finance transaction, the breadth of the CFDL is quite broad – drawing in not just closed-end and open-end transactions but also sales-based financing and factoring transactions.

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