

NY DFS Proposed Regs - Important ELFA Requests Granted

ELFA, powered by our Legislative and Regulatory Subcommittee and State Disclosure Workgroup, achieved major wins on Wednesday, October 20, after only being given 9 days to educate the New York Department of Financial Services (DFS) regarding their proposed disclosure regulations. **FIRST among those wins:** ELFA fought hard for a stay on compliance until 6 months after final adoption and publication of the regulations.

In what was an unusual request, the DFS sought input from stakeholders prior to proposing their draft disclosure regulations. ELFA used this opening to educate the DFS of our concerns. **Those draft regulations can be found here:** [2021 NY DFS Draft Regulations 10.20.21](#). ELFA is currently reviewing the draft regulations carefully and will file additional comments as deemed appropriate in the 60 days permitted.

In addition to the draft regulations linked above, the NY DFS issued a Regulatory Impact Statement. That Impact Statement include a statement on changes made based on comments from certain groups. **The items highlighted below** are all items that ELFA advocated for, and in some cases was the only group that did so for the benefit of all financiers.

From the Statement

*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. The Department received 8 comments. One commenter representing small businesses praised the proposed text and suggested additional protections for small business. Seven other comments requested revisions mainly for the benefit of financiers. **One commenter representing small businesses pointed out that FSL section 808 requires a special disclosure***

concerning “double dipping.” “Double dipping” refers to a common practice used by financiers when doing renewals and refinancing. Lenders charge borrowers for fixed fees still outstanding and due under a prior financing when they do a renewal financing or a refinancing; they then charge fixed fees for the new financing. The Department responded to this comment by amending its disclosure formats. Industry representatives objected to the term “double dipping,” but FSL section 808 uses this terminology and requires its use in disclosure forms. All commenters believe a transition period for compliance is necessary after Part 600 is adopted. Financiers and brokers must see the final regulation before they can adjust their computer systems, compliance procedures, and contracts with other parties. They must train their employees on the new law. Several commenters requested a six-month period for compliance. The Department has heeded this request. Affected parties will only be required to fully conform to the disclosure requirements of Part 600 six months after the final adoption and publication of the regulation. The Department made other changes based on comments from lending industry representatives. First, the Department modified the definition of when a specific offer is made that triggers the requirement to provide a disclosure. This change should allow for some negotiations between borrowers and lenders before disclosures are required. Second, commentors suggested the Department include the Secured Overnight Financing Rate (SOFR) as one of the acceptable rate indexes to be used in adjustable-rate financings. The Department feels this change is appropriate because the London Inter-Bank Offered Rate (LIBOR) is being phased out as a benchmark. Third, the Department clarified the definition of a “broker;” the term “broker” is now defined in terms of the substantive services they perform during the underwriting process. Finally, the Department has modified the allowed tolerances in the calculation of APRs required under Part 600.04. For most transactions, the tolerance threshold will remain 1/8 of a percent; for irregular transactions, the Department proposes a larger tolerance of 1/4 of a percent. The Department did not feel it was wise to make additional revisions to Part 600 at this time. Some comments requested changes that were inconsistent with the letter and spirit of FSL Article 8. Other comments require further deliberation by the Department and consideration of additional comments during a full 60-day comment period.

In addition, the DFS adopted ELFA's changes with respect to the definition of "lease financing" to remove any suggestion that *true leases and finance leases* were not exempt from the disclosure.