

How New York's New Truth in Lending Act Measures Against California and Federal Acts

President Lyndon B. Johnson in 1968 signed the Federal Truth in Lending Act (TILA) to provide greater transparency regarding credit terms and fees. While greatly assisting consumers in comparison loan shopping, the regulation excluded business loans, as business owners were generally considered financially savvier than an average consumer and did not need protection. Fast-forward to December 23, 2020: The New York State Senate passed [Bill S5470B](#), providing similar TILA protections, but focused on small-business owners.

Motivated by Nonbank Online Lenders

The bill's sponsor, New York State Senator Kevin Thomas, said the New York measure was initiated in part to address the proliferation of nonbank commercial lenders, many of them online, that provide lending products with widely varying disclosures on interest, cost and fees to small businesses. Thomas also [argued](#) that a lack of transparency has left business owners in the dark on the true costs of loan products and what the fine print means to them.

The number of fintech firms focusing on lending to small and medium-sized businesses has grown significantly in recent years. According to a [2019 report](#) issued by the Small Business Credit Survey, a collaboration of the 12 Federal Reserve banks, applications to online lenders have continued to trend upward, rising 19% in 2016, 24% in 2017 and 32% in 2018. The growth has occurred despite lower applicant satisfaction with online lenders compared to large and small banks. In 2017, fintech lenders originated \$6.5 billion of loans, according to the [Federal Reserve Bank of Cleveland](#), which also noted in the same report that loan recipients found that the two biggest challenges with the financing were high interest rates (32.8%) and unfavorable repayment terms (19%).

Still, the New York bill faced strong opposition when it was introduced. State Senator George Borrello described it as "[a cake that's not fully baked](#)," adding that such disclosure requirements would cause flexible and usually short-term loans to small businesses to dry up because lenders would "divert their funding to other states." Recognizing the opposition, Governor Andrew Cuomo signed the bill under the condition that there would be better clarity and alignment with existing requirements under the federal TILA.

Unlike California, which allowed covered lenders to wait until they issued a regulation to comply with the new law, New York does not provide a mandatory compliance date that ties to regulation issued by the New York Department of Financial Services. This means that January 1, 2022, will be both the effective and mandatory compliance date.

Two State Laws and the Federal Act

The New York measure is not the first of its kind. California passed a similar bill ([SB1235](#)) in September 2018 that went into effect on January 1, 2019. Like the California law, the New York Truth in Lending Act excludes banks, credit unions, federal savings banks, lenders regulated by the Federal Farm Credit Act and lenders providing fewer than five commercial financing transactions in a twelve-month period. Commercial financing transactions over \$500,000 are exempt under the California law; New York set the ceiling at \$2.5 million.

On January 6, 2021, Thomas introduced [S898](#), a proposed amendment to the bill to exclude automobile financing, add restitution for violations of disclosure requirements and push the effective date from June 21, 2021, to January 1, 2022. The amendment was approved and signed by Cuomo on February 16, 2021.

For those lenders subject to the New York law, it is important to consider operational and compliance risk management implementation. Unlike California, which allowed covered lenders to wait until they issued a regulation to comply with the new law, New York does not provide a mandatory compliance date that ties to regulation issued by the New York Department of Financial Services (NYDFS). This means that January 1, 2022, will be both the effective and mandatory compliance date.

To evaluate the operational changes likely required to comply with the New York law, it is important to understand the differences among the New York, California and federal versions. The tables below compare disclosure requirements for closed-end and open-end commercial financing under the three acts:

CLOSED-END DISCLOSURES	CA TILA	NY TILA	Federal TILA
Funding to be received (CA)/total amount of commercial financing (NY)/amount financed (federal)	✓	✓	✓
List of finance charges (CA)/itemization of amount financed (federal)	✓		✓
Estimated finance charge (CA)/finance charge (NY, federal)	✓	✓	✓

Annual percentage rate (all)	✓	✓	✓
Variable rate (federal)			✓
Payment schedule (CA, federal)	✓		✓
Total of payments (NY)/total repayment amount (federal)		✓	✓
Demand feature (federal)			✓
Prepayment (CA, federal)/prepayment fees (NY)	✓	✓	✓
Late payment (NY)/other fees and charges – late payment and returned payment fees (federal)		✓	✓
Collateral description (NY)/security interest (federal)		✓	✓
Contract reference (federal)			✓
Assumption policy (federal)			✓
Term (CA, NY)	✓	✓	

OPEN-END DISCLOSURES	CA TILA	NY TILA	Federal TILA
Annual percentage rate (all)	✓	✓	✓
Fees for issuance (federal)			✓
Estimated finance charge (CA)/finance charge (NY, federal)	✓	✓	✓
List of finance charges (CA)	✓		
Transaction charges (federal)			✓
Grace period (federal)			✓
Balance computation method (federal)			✓
Other fees and charges (draw, late payment or return payment fees) (NY, federal)		✓	✓
Billing error rights reference (federal)			✓
Statement of billing rights (federal)			✓

Collateral description (NY)/security interest (federal)		✓	✓
Funding to be received (CA)/maximum financing amount (NY)/	✓	✓	
Total repayment amount (NY)		✓	
Term of the plan (CA, NY)	✓	✓	
Estimated payment (CA)/payment frequency and amounts (NY)	✓	✓	
Any fees associated with prepayment or refinancing (NY)		✓	
Draw period (CA)	✓		
Prepayment (CA, NY)	✓	✓	

For New York factoring transactions, lenders must also disclose the purchase price of receivables and the amount disbursed and the total payment amount, as well as the description of receivables purchased and any additional collateral. (Refer to the California and New York acts regarding disclosure requirements for other types of commercial financing.)

As shown in the tables, all three require an annual percentage rate (APR) and finance charges, which are considered key disclosures for comparison shopping. The good news is that both California and New York refer to the Federal Truth in Lending Act (Appendix J to Regulation Z) for the APR calculation method. This allows covered lenders that also offer consumer lending to use their existing systems to disclose APR on commercial financing transactions. Even if the covered lender offers only commercial financing, there are many APR calculation tools to help disclose APR in compliance with Regulation Z.

For finance charge disclosure, both states refer to the Federal Truth in Lending Act ([1026.4](#)) to define their finance charges as the starting point and adding other fees associated with each type of commercial financing. This would include the discount taken on the face value of the accounts receivable (factoring transaction in New York and purchase transaction in California). Both states assume that the maximum amount of available credit is drawn during the draw period in an open-end financing to disclose the finance charge and in calculating APR.

The comparison tables also highlight several disclosures required under both California and New York acts that are outside of the federal version. Lenders serving New York small-business owners need to start identifying the additional disclosure requirements beyond the federal act that apply to their commercial lending products and prepare to make timely adjustments to their operating systems to meet the mandatory compliance date. It is also important to perform pre-implementation and post-implementation testing to ensure accuracy of the disclosures being generated.

What's Next for New York and Impacted Lenders

The NYDFS still needs to address several technical items, such as the timing of disclosures, APR accuracy tolerance, whether fees can change based on certain conditions and disclosure format. New York has an advantage as the second state to pass such a bill, as it can learn from, and leverage off of, the California act.

The New York Truth in Lending Act will go into effect on January 1, 2022, as recently amended. Even with that extension, the timing needed to implement the changes will be challenging, as the NYDFS needs to provide further guidance regarding final operational changes.

Impacted lenders should take proactive measures now. It is recommended that they evaluate the differences between the New York and federal acts, review California's proposed TILA regulation based on California and New York similarities, and assess whether their existing system can generate the applicable disclosures that will help prepare them to comply with the effective date.

Similar to the way the California Consumer Privacy Act prompted other states to establish their own versions of privacy laws, the California and New York TILAs are likely to be the beginning of a wave of similar bills to emerge in other states across the country. Therefore, lenders whose market area does not include California or New York should also pay close attention to these bills and assess their level of operational and compliance agility to determine how quickly they can adopt changes in response to their states' TILA.

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