

**MANAGEMENT COMMITTEE**

PRESIDENT
JOHN DEPLEDGE
BANK LEUMI USA

FIRST VICE PRESIDENT
JEFFREY GOLDRICH
NORTH MILL CAPITAL LLC

VICE PRESIDENT – FINANCE
PETER YORK
J.P. MORGAN SECURITIES LLC

CO-GENERAL COUNSEL
JONATHAN HELFAT
OTTERBOURG P.C.

CO-GENERAL COUNSEL
RICHARD KOHN
GOLDBERG KOHN LTD.

CEO & SECRETARY
RICHARD GUMPRECHT,
SECURED FINANCE NETWORK

Honorable Kenneth Paul Zebrowski
Assemblyman District 96
Chair: Committee on Governmental Operations

Via Email

June 23, 2020

Re Assembly Bill: 10118

Dear: Assemblyman Zebrowski;

We are writing to you to make various suggestions to your proposed legislation as requested during our conference last week. First let us thank you for taking the time out of what must be a very stressful and difficult time for you in order to meet and listen to our position regarding Assembly Bill 10118.

The Secured Finance Network (formerly known as the Commercial Finance Association) (“SFNet”) is the international trade organization (founded in 1944) representing the asset-based lending, factoring , trade and supply chain finance industries, with member organizations throughout the State of New York (113 members), the United States Canada and around the world. Our members provide between \$10-20B annually in working capital to over 1,500 New York businesses. As we have previously discussed SFNet and its membership are supportive of providing as much information as possible to small businesses in order to assist them in making an informed decision on which financing product is right for them. However, SFNet and its members continue to have concerns regarding the disclosure requirement of Assembly Bill 10118 .

SFNet and its members urge you to take the comments and suggestions below into account with respect to the proposed legislation. Although the disclosure requirements of the proposed legislation have implications with respect to many forms of financial products provided by our members, we specifically direct you to the implications on factoring and asset based lending:

DOLLAR LIMITATION OF \$250,000.

If it is the intent of the legislation is to allow small and medium size enterprises ("SME's") to make informed decisions when considering borrowing from financial institutions (which we believe it is); then it is our experience as a trade association with 75 years of market insight that the extension of credit in excess of \$250,000 is sought by a much more sophisticated borrower with the skills necessary to discern the bona fides of the various offer this borrower may solicit. It is in our view the borrower who is soliciting credit under \$250,000 that needs the benefit of the legislation. We would therefore request that the proposed legislation only relate to Providers who are offering Recipients credit in the sum of \$250,000 or less.

REVOLVING CREDIT DISCLOSURE

We believe that the proposed legislation relates primarily to term loans meaning that the loan is made in a lump sum at the beginning of the lending relationship and paid back over time. As a result the Provider can more easily estimated the exact dollar cost to the borrower. Our members are in a different business. They make revolving loans which are advanced in differing sums (sometimes daily/sometimes weekly) over the course of the facility and are sales based. To protect revolving lenders while requiring them to make the same disclosures as term loan lenders we suggest the following language:

"Notwithstanding anything to the contrary contained in this Amendment; if a Recipient intends to enter into either a Sales Based Financing, Commercial Financing, Accounts Receivable Financing or Commercial Line of Credit, all as defined herein, with a Provider pursuant to a revolving loan or line of credit transaction, then the Annual Percentage Rate as provided for in the Specific Offer and any fees or commissions which may be charged to the Recipient may be expressed as a percentage of sales volume rather than as a dollar cost".

SAFE HARBOR

As the proposed legislation allows the Provider to "estimate" the cost of its facility; we believe that a "safe harbor" provision should go hand in hand with being able to estimate the cost of the facility. We would suggest a safe harbor provision which insulates the provider from liability if it complies with the requirements of the proposed legislation in good faith. This would be very similar to safe harbors contained in the Federal Truth-In-Lending Act for consumer lending disclosures. Specifically see 15 U.S.C. Sections 1640(b) and (C).

Thank you for considering our suggested changes to proposed Assembly Bill 10118. Should the Bill be amended as described above, SFNet would be supportive of this legislation.

Respectfully,



Richard D. Gumbrecht
CEO
Secured Finance Network

cc. Christopher Duryea cduryea@statewidepublicaffairs.com