

**EMAIL FROM THE SMALL BUSINESS FINANCE ASSOCIATION REGARDING MERCHANT CASH  
ADVANCE LEGISLATION**

**RELEVANT TO SB913/HB1478**

From: **Steve Denis** <[sdenis@sbfassociation.org](mailto:sdenis@sbfassociation.org)>

Date: Fri, Nov 15, 2019, 11:49 AM

Subject: SBFA Update and Dates

To: Steve Denis <[sdenis@sbfassociation.org](mailto:sdenis@sbfassociation.org)>

**Upcoming Dates**

**SBFA Policy Call: Thursday, November 21st 2PM EST**

202-770-3151(no pin required)

**SBFA Meeting in Miami: Thursday, January 16th 12-2PM**

Lunch at DeBanked Broker Connect Conference, Location TBD

Please RSVP to [sdenis@sbfassociation.org](mailto:sdenis@sbfassociation.org)

**Update Items**

I strongly encourage you or a member of your team to join the call next week. While I'll provide a quick update below, many of the items need further discussion and more context that is better articulated over the phone or I would prefer not to share over email. As always, please feel free to call me at any time if you have any questions.

**The FTC Investigation**

The FTC is continuing its investigation into the MCA/alternative finance industry. Over the last few months I have had several meetings with staff and the commission and attended public hearings and speeches. It is clear the commission is going to take action against the industry but still unclear who the actual target will be or what enforcement action will look like. There are two big issues that seem to be the focus of the investigation: 1) misleading marketing practices, specifically by brokers; 2) the disclosure (and execution) of true-up options provided to merchants.

There is valuable context I will provide on this situation during next week's call.

**A Big Win in California**

The California DBO has continued the process to implement SB 1235 that requires certain disclosures for our industry. They are currently trying to decide how to implement the law to include some type of annualized metric (either APR or a simplified interest calculation). In August, they released draft regulations for comment that included an APR disclosure

component. We met with the DBO in October and urged them to test any type of metric they plan to adopt with actual small businesses before moving forward with implementation.

The good news is they have adopted our suggestion and will move forward with a testing project that will delay the implementation further. Reminder, this law took effect on January 1 this year. It took until August for draft regulations (which are not even proposed regulations) and any further implementation is delayed until next year. Frankly, I don't think we will see any final rule until 2021 at the earliest and, as a reminder, the law will sunset at the end of 2022 which means to renew the law, they would need to start the legislative process in January of 2022. Bottom line, it is a bureaucratic mess and a good win for SBFA.

### **California's Ripple Effect in Other States**

In other states (like New York and New Jersey) who have proposed APR disclosure bills, the main argument of our opponents has been "California is moving forward with APR." That is simply an argument they can't make anymore. It is clear California is rethinking APR and the entire implementation of SB 1235, and that should give other states pause.

It's also a big hit to the SmartBox initiative. The whole idea behind SmartBox and pushing APR disclosure was the thought that APR disclosure was "inevitable." The SmartBox crowd has been saying this for three years and no states are any closer to adopting APR disclosure. In New Jersey, the bill seems to be stalled (although, always subject to change) and in New York it is clear the DFS and the legislature do not intend to move APR disclosure legislation.

### **More Action in New York**

Senator Sanders, chairman of the Senate Banking Committee, has introduced a bill that would require licensing for all small business financing providers (including those who use a bank partnership) in New York. [The bill](#) is loosely based on the same concept adopted in California. I will provide more context on the strategy and what we expect to happen with this bill on the upcoming call. Our initial thought is that this is good for the industry and will keep the legislature distracted from more impactful legislation like MCA reclassification, rate caps, or restrictive disclosure regimes.

### **Other News and Notes**

- The U.S. House Financial Services Committee passed two bills that have a significant impact on our industry. First, the federal ban on the COJ. Second, amending the Fair Debt Collections Act to apply to small business lending. You can view the bills [here](#). While these bills passed the committee and could receive a vote in the House, there is no chance they will move in the Senate this session.
- We are in the middle of working with our technology partner to make major upgrades to SBFA's merchant database. The upgrades are intended to make it more user friendly and provide better information for your underwriting team. If you have any

suggestions for improvements, please let me know ASAP, as we are in development now.

- We are co-hosting a fundraiser for New York Assembly Speaker Hastings on Tuesday, November 19<sup>th</sup> at 7 p.m. in New York City. If you have any interest in attending, please let me know.
- The call agenda also includes an election update, other states we anticipate action in 2020, and other industry issues. Please join us next Thursday.