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July 16, 2020

The Honorable Carl Heastie
New York State Assembly Speaker
932 Legislative Office Building
Albany, NY 12248

RE: Assembly Bill 10118-A (Commercial Financing Disclosures)

Dear Speaker Heastie:

Thank you for the opportunity to provide comments on **AB 10118-A** which requires prescriptive disclosures in commercial financing. PayPal believes in equal access to credit and in transparency using meaningful disclosures to help small businesses make informed decisions. However, the legislation includes disclosure calculation requirements that may not accurately reflect the cost of financing and could cause confusion to customers as they consider the wide array of commercial financing options available.

As background, PayPal is a leading online payments company, with over 300 million active user accounts globally. PayPal is also currently a general servicer and marketing servicer providing certain processing services through an arrangement with WebBank, a FDIC insured state-chartered bank, for three small business lending products: PayPal Working Capital (PPWC), PayPal Business Loan (PPBL), and LoanBuilder, A PayPal Service (LBAPS). **To highlight the positive impact of these products in New York, from January through September 2019, these three products provided approximately $252 million in financing to over 6,400 New York small businesses. Additionally, PayPal participated in the federal Payroll Protection Program nationally lending $2 billion to approximately 69,000 small businesses as of the end of June.**

These business financing products serviced by PayPal are unique and transparent products that provide fast, flexible, and fair access to credit for small businesses that otherwise may not receive funding. PPWC is primarily based on a business' PayPal account history and is repaid through a chosen percentage of the business' PayPal sales, with a minimum payment required every 90 days. PPBL and LBAPS are short, fixed-term loans, ranging from 13-52 weeks, with fixed weekly payments from the business' checking account.

These loans fill a gap in the small business lending industry, which is important now more than ever amid the economic crisis brought on by the COVID-19 pandemic. Commercial financing options like these are helping businesses keep their doors open. These loans provide small businesses with flexible repayment options and clear terms. **The cost for all of these loan products is structured as a single, fixed fee that the borrower knows in advance, without any periodic interest charges, late fees, or prepayment fees.**

In its current form, the legislation requires sales-based financing and closed-end commercial loans to disclose an estimated or full annual percentage rate (APR) calculation. **However, APR is a metric used in**

***consumer* loans, as required by federal Regulation Z. Including APR in this context raises concerns with the appropriateness of applying APR to commercial loans and the complexity associated with the calculation.** Commercial loans are structured differently than consumer loans and used for different purposes. Because of this, the legislation needs to consider and address the extent to which Regulation Z's methodologies, assumptions and calculations – and guidance related thereto – are applicable to commercial lending, if at all. Moreover, the use of APR in the commercial context may cause confusion for customers accustom to seeing APR rates associated with consumer products (*i.e.* credit cards).

Additionally, APR is among the most complicated concepts with which consumer creditors must grapple, and generally cannot be calculated by hand or even with a scientific calculator or spreadsheet. Nor can APR be represented using a simple algebraic equation. While the guidance and calculation examples in Regulation Z are for common types of consumer loans, we are not aware of any examples of loans with daily payments, which are now common in the small business loan market. Calculating an estimated APR for PPWC will be extremely difficult given the complexity of the APR calculation and the current limitations with existing APR calculation tools. The limitations of the APR tools make its calculation difficult even for PPBL and LBAPS, which have set, weekly repayments. In addition, APR calculations for PPBL and LBAPS products may not accurately reflect the true cost of the loan; therefore, skewing the benefit the customer would receive from the financing.

In addition to concerns with APR, the effective date of 180 days is problematic – this is an extremely short timeframe in which regulations will need to be finalized and providers will need to make both complex systemic and operational changes required for compliance with new disclosures.

In conclusion, we believe additional work is needed on the legislation given the complexity and challenges in determining APR and to find the most appropriate disclosures and metrics that will best serve New York's small businesses. Additionally, it is worth noting that, during an economic and public health crisis, added regulatory burdens and operational changes could impact the availability of products in the market.

We would be happy to continue a dialogue with the bills' sponsors and committees on appropriate and meaningful disclosures for commercial financing products.

Thank you for considering our comments on AB 10118-A, and please feel free to contact me directly with any questions.

Sincerely,

Megan Howell

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CC: Senator Kevin Thomas, Chair Senate Committee on Consumer Protection
Assemblyman Kenneth Zebrowski, Chair Assembly Committee on Governmental Operations
Senator James Sanders, Jr., Chair Senate Committee on Banks
Assemblyman Thomas Abinanti, Chair Assembly Standing Committee on Banks