# New York Licensed Lender Annual Fee Authority to Sunset. Or Will It?

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The New York Licensed Lender Act (the "Act"), which is nestled within the Empire State's Banking Laws, requires the licensure of nonbank lenders that extend consumer-purpose credit in amounts of $25,000 or less (or for business or commercial purposes in amounts of $50,000 or less) at a rate in excess of New York's civil usury limit. Like several other state lending laws in New York, the Act is a "no other charge" law, meaning that only those fees expressly authorized by the Act are permitted.

Included among the menu of acceptable fees found in the Act is an annual fee for open-end lines of credit. The amount of the fee is limited to the lesser of one percent of the total loan amount or $50. Licensees that charge such a fee under the Act are also tasked with filing an annual report with the New York Department of Financial Services including certain anonymized, aggregate information regarding their open-end credit borrowers. Both of these provisions were added to the Act in 1996. When drafted, the purpose of the annual fee was to provide creditors with an additional revenue stream if the open-end account lay fallow and (altruistically) to provide creditors with an alternative to charging higher rates.

Interestingly, both annual fee provisions currently found in the Act – the authorizing provision and the reporting provision – were originally scheduled to sunset out of the law in June of 2000. However, the New York legislature has regularly kicked this sunset date down the line. This has occurred on seven separate occurrences – each in two-year increments. The currently effective two-year extension of this sunset period is scheduled to expire at the end of June of this year.

Will it? At this point that is anyone's best guess. Although the current legislative session is still young (not quite two months old as of the publication date of this article), there are currently no bills introduced into the session that would amend the Act to extend the sunset of these provisions. If nothing is done, both provisions – most importantly the components of the Act authorizing the imposition of an annual fee – will drop out of the statute. If this occurs, annual fees would become impermissible on open-end credit extended by licensees under the Act.

Creditors offering open-end credit under the Act should keep an ear to the ground for developments on this front. If there are none, and if the creditor is assessing an annual fee on open-end credit under the Act, it will need to cease doing so effective June 30, 2019. From a "pray for the best, plan for the worst" perspective, the creditor may wish to commence discussions with operations folks as to what it might take to turn off such fees as of that date, while simultaneously

hoping that this will ultimately be much ado about nothing.

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