



October 3, 2018

CALIFORNIA TO REQUIRE CONSUMER TYPE DISCLOSURES ON SMALL BUSINESS LOANS

California S.B. No. 1235 was signed by the governor on September 30, 2018 and will require disclosures to be provided on certain commercial loans after January 1, 2019 and provided the Commissioner of Business Oversight has adopted regulations implementing the new law's requirements. The new law requires "providers" of "commercial financing" to provide disclosures to "recipients" at the time of extending a specific offer of commercial financing, and requires providers to obtain the recipient's signature on the disclosures before consummation of the transaction. Under the new law, providers must disclose all of the following:

- (1) The total amount of funds provided.
- (2) The total dollar cost of the financing.
- (3) The term or estimated term.
- (4) The method, frequency, and amount of payments.
- (5) A description of prepayment policies.
- (6) The total cost of the financing expressed as an annualized rate.

Providers offering financing that is factoring or asset-based lending may provide an alternative disclosure.

The law requires the commissioner to adopt regulations governing these disclosure requirements, including regulations regarding the specified information to be provided and how this information should be determined. The law contains disclosure requirements that are operative until January 1, 2024 and revised disclosure requirements that become operative January 1, 2024. The disclosure required after January 1, 2024 do not include the total cost of financing expressed as an annualized rate. A provider is not subject to the new requirements until the regulations are adopted and become effective.

"Commercial financing" means an accounts receivable purchase transaction, including factoring, asset-based lending transaction, commercial loan, commercial open-end credit plan or lease financing transaction intended by the recipient for use primarily for other than personal, family or household purposes.

"Commercial loan" means a loan of a principal amount of \$5,000

or more, or any loan under an open-end credit plan, the proceeds of which are intended by the recipient for use primarily for other than personal, family or household purposes.

"Recipient" means a person who is presented a specific commercial financing offer by a provider that is equal to or less than \$500,000.

"Provider" means a person who extends a specific offer of commercial financing to a recipient. "Provider" also includes a nondepository institution, which enters into a written agreement with a depository institution to arrange for the extension of commercial financing by the depository institution to a recipient via an online lending platform administered by the nondepository institution. The law does not apply to certain named entities or transactions, including:

- (1) A provider that is a depository institution.
- (2) A commercial financing transaction secured by real property.

The new California law imposing consumer type disclosures on commercial financing is the first of its kind. Other states may follow California's lead and exact similar laws. We will continue to monitor the enactment of laws requiring consumer type disclosures or other requirements on commercial lending. Please let us know if you have questions. □

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