



October 14, 2021

THIRD ROUND OF MODIFICATIONS TO CALIFORNIA COMMERCIAL FINANCING DISCLOSURE REGULATIONS RELEASED

On October 12, 2021, the California Department of Financial Protection and Innovation released its third set of modifications to the proposed Commercial Financing Disclosure Regulations in an ongoing comment process. See our prior ALERT dated Apr. 8, 2021.

The proposed modifications make a number of revisions, including the following:

- The regulations are renumbered to better match the Department's wider regulatory scheme.
- Variation from font requirements are now permitted if the provider makes a good faith determination that the deviation is necessary for clarity based on the medium the disclosure is provided on.
- The "broker" definition is revised to add an express requirement that a person act "for compensation" to be a broker.
- The disclosures required for closed-end, open-end, factoring, sales-based financing, general asset-based lending and general transactions are revised to remove required explanatory material when the amount financed is greater than the funds available to the recipient, and the amount financed includes funds paid to brokers.
- The method for calculating when a lease transaction meets the \$500,000 threshold for exemption by net cost to acquire or cash sale price are removed. Now the threshold is assessed by the amount financed.
- The duty of a financier to provide copies of disclosures to brokers now triggers broadly wherever there is a specific commercial financing offer instead of triggering when one of multiple enumerated conditions are met. A financier's duty to develop procedures to reasonably ensure the disclosures are provided is similarly broadened.
- A provider can no longer assume it can collect required payments on every calendar day for the purposes of calculating the APR.

This round of proposed modifications makes a number of changes; however, none of these changes materially simplify the disclosure requirements that small business lenders must provide to recipients. The last day to submit written comments regarding these modifications is October 27, 2021. If you would like help with submitting a comment, please let us know. We will continue to monitor the status of state commercial financing statutes and regulations in California, New York and elsewhere. ☐

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