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## NYFDS ISSUES DRAFT COMMERCIAL DISCLOSURE REQUIREMENTS

Acting Superintendent of Financial Services Adrienne A. Harris announced a new proposed regulation implementing the New York Commercial Financing Disclosure Law (“CFDL”) for small businesses commercial financing. The proposed regulation requires companies that offer commercial financing in amounts under \$2.5 million to make disclosures somewhat like those required by the federal Truth in Lending Act and Regulation Z. The CFDL mandates certain disclosures for commercial financing is effective January 1, 2022. See our Alert dated [Dec. 14, 2020](#).

The commercial disclosures are required for “providers” of various forms of commercial financing including third-parties who solicit and present offers of financing. Among its provisions, the proposed regulation:

- Provides rules for calculating the finance charge and annual percentage rate;
- Provides formatting requirements for disclosures for the following types of financing:
  - Sales-based financing;
  - Closed-end financing;
  - Open-end financing;
  - Factoring transaction financing;
  - Lease financing; and
  - General asset-based financing;
- Describes how the CFDL’s disclosure threshold of \$2.5 million is calculated;
- Addresses certain duties of financiers and brokers involved in commercial financing; and
- Requires regular reporting of data by providers calculating estimated annual percentage rates to the Superintendent relating to the actual retrospective annual percentage rates of completed transactions.

Although the regulations attempt to address different types of commercial lending arrangements, because of the unique nature of many commercial lending transactions, lenders are likely to find compliance with the disclosures a challenge.

With these regulations, New York joins California as the two states that have intensified their regulation of commercial lending. Similar laws are pending in a few other jurisdictions. The proposed regulations are subject to a 60-day comment period and thus may change in response to comments provided to the Department of Financial Services. If you have any questions or would like assistance in submitting a comment to the Department of Financial Services, please let us know. ☐

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