



June 15, 2022

CALIFORNIA FINALIZES COMMERCIAL FINANCING DISCLOSURE REGULATIONS

The California Department of Financial Protection and Innovation ("DFPI") released the final regulations implementing the Commercial Financing Disclosure Act. The regulations are a culmination of a long regulatory process. See our prior ALERTS dated Apr. 8, 2021, Oct. 14, 2021 and Nov. 16, 2021. These regulations set forth the precise formatting and calculation methods to make the required commercial disclosures. While similar to the most recent iteration of the regulations, the finalized regulations have been substantially revised from the initial proposed regulations.. The final regulations include the following provisions that differ from the initial proposed regulations:

- Estimates based on monthly sales or income may exclude outlier months where decreased sales occurred from a cause unlikely to recur during the contract;
- An example illustrating how to disclose an APR is added;
- Disclosures no longer must state the disclosure is required by "California law" but can state the disclosure is required by "applicable law";
- The definition for "average monthly cost" now specifies the arithmetic mean instead of any statistical mean;
- Deviations from font requirements are permitted if the provider makes a good faith determination that the deviation is necessary to comply with the Americans with Disabilities Act or for clarity based on the medium on which the disclosure will be presented (e.g., mobile phone or tablet);
- Providers may use 30.4 days as the standard length of a month in estimating or averaging payments or term.

The regulations are effective June 9, 2022 and require compliance by December 9, 2022. California becomes the first state with finalized commercial disclosure requirements. Whether other states that have enacted similar disclosure requirements will adopt regulations that match California's disclosures is uncertain. Federal legislation, like the proposed Small Business Disclosure Act currently before the United States House Committee on Financial Services, may be needed to provide uniformity in commercial disclosure requirements. We will continue to monitor the status of state

commercial financing disclosure statutes and regulations in New York, Utah, Virginia and elsewhere. ☐

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