



February 10, 2023

NEW YORK FINALIZES COMMERCIAL FINANCING DISCLOSURE REGULATIONS

On February 1, the New York Department of Financial Services issued final regulations implementing the Commercial Finance Disclosure Law ("CFDL"). The regulations apply to multiple types of commercial financing products and require providers to deliver disclosures when "extending a specific offer" for commercial financing in amounts under \$2.5 million to a "recipient," defined as a person who applies for commercial financing and is made a specific offer of commercial financing by a provider. This final regulation is the third version of the regulation issued. See our ALERTS dated [Sept. 29, 2022](#) and [Sept. 27, 2021](#). Compliance with the final regulations is required by August 1, 2023.

The two most notable changes in the final regulations for a multistate commercial financing program are:

- A further jurisdictional restriction, limiting the applicability of the CFDL to only when either the recipient's business is principally directed or managed from New York, or, in if the recipient is a natural person, the recipient is a legal resident of New York. Previously, disclosures were required if either *the provider or the recipient* was a resident of New York.
- An expansion of the definition of "financial institution" to include any entity where a majority ownership is held by a financial institution. This expands the CFDL's exemption for banks, credit unions, ILCs and other depository institutions to include their affiliates and subsidiaries.

The final regulations include other changes and clarifications:

- The timing for the APR disclosure is clarified so that APR disclosures are only required at the time the "specific offer" is quoted to a recipient, after a provider has obtained the necessary information about the borrower and the proposed terms to calculate the APR.
- Recipients no longer need to receive notice of assignment of the commercial financing contract 15 days prior to the assignment date to require the recipient to pay the assignee. The regulation is now consistent with UCC Section 9-406 and requires payments to the assignee only after the notification is actually received.

- Broker compensation is no longer included in the disclosure form itself but rather must be separately explained in writing.
- The electronic signature requirements were made more flexible to include a checkbox, accept button or any other method compliant with the New York Electronic Signatures and Records Act.

The Department declined requested exemptions for Small Business Administration-licensed lending companies and financiers who offer disclosures compliant with the federal Truth-in-Lending Act.

The Department previously announced that it would harmonize the New York requirements with California's similar commercial disclosure law as much as possible with two different statutes. The final regulations show that there will be inconsistent requirements between the two states. For example, both the New York and California laws apply only to recipients principally directed or managed from the respective states. However, the California regulator refused to include an exemption for affiliates and subsidiaries of financial institutions found in the New York regulations. Multistate financing programs must be mindful of the differing requirements. As other states eye regulating small business financing, they now must choose whether to look to California or New York as a starting point.

With the compliance date less than 6 months away, those businesses subject to the regulation need to begin preparing for compliance. As the disclosure requirements vary based on the type of financing, compliance starts with identifying the type of commercial financing offered: sales-based, closed-end, open-end, factoring or other type of financing. If you have any questions regarding compliance with New York, California or other states' requirements, please let us know. ☐

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