



CFPB DETERMINES COMMERCIAL FINANCING DISCLOSURES NOT PREEMPTED UNDER TRUTH IN LENDING

In response to a written request by the Small Business Finance Association, the Consumer Financial Protection Bureau issued a final preemption determination finding that the Truth in Lending Act does not preempt the commercial financing disclosure statutes in New York, California, Utah and Virginia. See our ALERTS dated [Sept. 29, 2022](#) and [Dec. 14, 2020](#) (New York); [June 15, 2022](#) (California) and [May 6, 2022](#) (Utah and Virginia) for our discussion of these laws. The CFPB issued the final determination after issuing a preliminary determination and undergoing notice-and-comment rulemaking. See our ALERT dated [Dec. 8, 2022](#).

The CFPB received fifteen comments from trade associations, consumer advocacy organizations, small business lenders and the California Attorney General. After analyzing the comments, the CFPB concluded that TILA does not preempt current state commercial financing disclosure laws. TILA has a narrow standard for preemption that displaces State law only in the case of "inconsistency," and even then only to the extent of the inconsistency. Because TILA is only intended to ensure that consumer purpose credit terms are disclosed in a meaningful way to consumers, commercial purpose transactions (and any associated disclosures) are beyond TILA's scope.

The CFPB declined to address the specific issue of whether TILA preempts New York and California statutes' express incorporation of TILA's "annual percentage rate" and New York, California and Virginia's express incorporation of TILA's "finance charge." The preemption request stated that the APR and finance charges calculated disclosed under the commercial statutes could differ from how they are calculated and disclosed under TILA, creating inconsistency and confusion if both are used. However, the CFPB declined to address the potential confusion because the two sets of disclosures cannot appear in the same transaction and the current state commercial disclosure laws, unlike TILA, do not regulate advertising.

Please let us know if you have questions regarding the state commercial financing disclosure laws.

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