



September 15, 2020

## CALIFORNIA DBO PROPOSES RULES FOR COMMERCIAL FINANCING DISCLOSURES

On September 30, 2018, California enacted a law that requires disclosures to be provided on certain commercial financing transactions ("Commercial Financing Disclosure Law"). See our prior ALERT dated [Oct. 3, 2018](#). On September 11, 2020, the California Department of Business Oversight ("DBO") issued a Notice of Proposed Rulemaking for the regulations governing these commercial financing disclosures. The Commercial Financing Disclosure Law mandates that the DBO draft regulations implementing the specific requirements of the disclosures to be provided to recipients, including definitions, methods of calculation for certain disclosure items, the method of expressing the annualized rate disclosure and the time, manner and format of the disclosures.

The proposed regulations provide more detail on when the commercial disclosures must be provided. The Commercial Financing Disclosure Law requires that a provider subject to the Law must provide a list of certain disclosures to a recipient *at the time of extending a specific commercial financing offer to that recipient*. The proposed regulations define "at the time of extending a specific commercial financing offer" as (i) the time when a specific amount, rate or price, in connection with a commercial financing, is quoted to a recipient, based upon information from or about the recipient and (ii) any subsequent time when the terms of an existing commercial financing contract are amended or supplemented, prior to the recipient agreeing to the changes, if the resulting changes to the contract would result in an increase to the finance charge, payments, term or annual percentage rate, regardless of whether these terms were previously disclosed to the recipient.

The proposed regulations also expand on the disclosure content and formats. The Commercial Financing Disclosure Law provides a list of five or six items, depending on the type of financing, that must be disclosed. A section of general formatting and content requirements apply to all forms of commercial financing subject to the disclosure requirements. Other sections contain more detailed content and formatting requirements that apply specifically to closed-end transactions, open-end credit plans, factoring transactions, sales-based financing, lease financing, general asset-based lending transactions and all "other" transactions, respectively. For example, the closed-end transaction formatting and content requirements

section dictate that the provider present the disclosure in a table consisting of seven rows and three columns. Specific details are set forth for each box in the table.

The general formatting and content requirements require that specific disclosures appear at the top and before the signature of the disclosure statement. The disclosures must be presented to the recipient as a separate document from any other contract, agreement or disclosure.

The proposed regulations also include sections that further explain (i) how to determine whether the amount of a commercial financing offer is equal to or less than \$500,000, (ii) the disclosure requirements for commercial financings with multiple payment options or balances payable on demand and (iii) the calculation of the annual percentage rate and finance charge. Providers and brokers must comply with certain requirements if the provider uses a broker to communicate with recipients.

The proposed regulations clarify that the commercial disclosures only need to be provided to recipients whose business is principally directed or managed from California. Notably, the proposed regulations use the term "financer" instead of the term "provider" as is used in the Commercial Financing Disclosure Law. The term "financer" has an almost identical definition as the term "provider". Under the proposed regulations, "provider" is separately defined with the following clarifications: (i) a provider includes a financer when the financer communicates a specific amount, rate or price in connection with a commercial financing, based upon information from, or about, a recipient, either directly to a recipient, or to a broker with the expectation that the information will be shared with a recipient and (ii) the phrase "administered by" excludes arrangements where a nondepository institution provides technology or support services for a depository institution's commercial financing program, provided that the nondepository institution has no interest, or arrangement or agreement to purchase any interest in the commercial financing extended by the depository institution in connection with such program, and the commercial financing program is not branded with a trademark owned by the nondepository institution.

The DBO anticipates that the proposed regulations will go into effect (if adopted on or before January 1, 2021) on July 1, 2021. If the proposed regulations are adopted after January 1, 2021, the

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effective date will adjust accordingly to maintain a six-month delay in effectiveness.

The DBO is accepting written public comments on the proposed regulations until October 28, 2020. If you have any questions please let us know.

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