



April 8, 2021

## MODIFICATIONS TO PROPOSED CALIFORNIA COMMERCIAL FINANCING DISCLOSURE REGULATIONS RELEASED

On April 7, 2021, the California Department of Financial Protection and Innovation released a first set of modifications to the proposed Commercial Financing Disclosure Regulations in response to the public comments received about the original regulations. See our prior ALERT dated Sept. 15, 2020.

The proposed modifications make a number of revisions, including the following:

- The phrase “at the time of extending a specific commercial financing offer” is revised to include (i) a verbally quoted payment, rate or price amount and (ii) each draw on an open-end credit plan if draws occur at the time that a recipient purchases products or services from a retailer or supplier and the rate or price varies based upon the retailer or supplier the recipient selects or the products or services the recipient purchases.
- The factoring “term” is revised to require that a finance provider disclose a sample term reasonably expected to be within the range of terms expected to be used during the life of the master agreement.
- The “term” definition is revised to add a new “term” for asset-based lending disclosures, which equals the length of time necessary for the recipient to fulfill its obligations under the financing contract given the assumptions that the recipient borrows up to the approved credit limit at origination and the recipient maintains a balance equal to the approved credit limit for a time equal to the draw period or one year, whichever is less.
- The definitions section includes new terms (i) amount financed, (ii) recipient funds and (iii) funds paid to brokers.
- The disclosures required for closed-end, open-end, factoring, sales-based financing, lease financing and general asset-based lending transactions are revised to add an additional row that sets forth the maximum or total amount of funding the financier will provide and potential additional explanatory material.
- The open-end credit plan disclosure adds an additional row that requires that the “estimated total payments” be disclosed based on the total amount of payments the recipient will make during the term. The sales-based financing transaction disclosure also adds this “estimated total payments” disclosure.
- The sales-based financing “historical method” estimates is revised.
- A new section titled “Tolerances” is added to the regulations.
- The regulations add a new “Funding You Will Receive” disclosure requirement.

The last day to submit written comments regarding these modifications is April 26, 2021. The proposed modifications make a number of significant changes; however, none of these changes materially simplify the disclosure requirements that small business lenders must provide to recipients. We can provide a more detailed summary of the revisions. We will continue to monitor the status of state commercial financing statutes and regulations in California and elsewhere and keep you updated. ☐

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