

June 13, 2022

California DFPI Publishes Final Commercial Loan Disclosure Regulations

By: [Melissa Richards](#)

On June 9, 2022, the California Department of Financial Protection and Innovation (CA DFPI) issued its long awaited final regulations implementing SB 1235's (2018) new early disclosure requirements on commercial financing offers equal to or less than \$500,000. The CA DFPI regulations take effect December 9, 2022.

The final regulations can be found at Title 10, Chapter 3 of the California Code of Regulations. The link to Chapter 3 is [HERE](#).

CA DFPI was required to issue these regulations by California Financial Code Section 22804 after the enactment of SB 1235 in 2018. SB 1235 (2018) adds a new Division 9.5 - Commercial Loan Disclosures to the California Financing Law, adding new Financial Code Sections 22801-22804. The disclosure law applies to commercial lenders under the California Financing Law (referred to as "Providers") when extending a specific offer of commercial financing other than commercial mortgage financing. The disclosure law also applies to non-depository Providers entering into a written agreement with a depository institution to arrange for the extension of commercial financing by the depository institution to a recipient via an online lending platform administered by the Provider. The purpose of these "early" disclosures is to encourage and assist commercial loan borrowers to shop for the best loan for their financial needs.

SB 1235 (2018) exempts the following commercial lenders and financing transactions from the new early disclosure requirement and CA DFPI regulations:

- Depository institutions;
- Lenders regulated under the federal Farm Credit Act (12 U.S.C. Sec. 2001 et seq.);
- A commercial financing transaction secured by real property;
- A commercial financing transaction in which the recipient is a dealer, as defined by Section 285 of the Vehicle Code, or an affiliate of such a dealer, or a vehicle rental company, or an affiliate of such a company, pursuant to a specific commercial financing

offer or commercial open-end credit plan of at least fifty thousand dollars (\$50,000), including any commercial loan made pursuant to such a commercial financing transaction; and

- Any person who makes no more than one commercial financing transaction in California in a 12-month period or any person who makes five or fewer commercial financing transactions in California in a 12-month period that are incidental to the business of the person relying upon the exemption.

The CA DFPI regulations prescribe in detail the content and layout of commercial financing disclosures to be delivered at the time a specific type of commercial financing offer equal to or less than \$500,000 is made. For instance, the regulations prescribe disclosures to be presented in chart form, specifying the number of columns, rows, and font size for each row.

CA DFPI regulations cover the following commercial loan transactions, in addition to a catchall "All Other" category:

- Factoring Agreements;
- Open- and Closed-end Commercial Loans;
- Open-end Credit Plans;
- Sales-based Financing;
- Lease Financing; and
- Asset-Based Financing.

In addition, the CA DFPI regulations adopt Truth-in-Lending Act/Regulation Z type disclosure including:

- Amount Financed;
- Itemization of Amount Financed;
- Annual Percentage Rate;
- Finance Charge - both Total and Itemized;
- Payments - method, frequency and terms for both fixed and variable rate financing;
- Estimated Term of the proposed transaction; and
- Loan Prepayment terms.

As of this writing, CA DFPI has not published model disclosures to comply with the early commercial financing disclosure regulations. The Buchalter Commercial Finance Group is advising our clients on regulatory compliance issues and developing of model early commercial financing disclosures specific to business plan and loan product offerings.

Please reach out to any of the Buchalter's Commercial Finance Group members below for assistance in understanding how these final rules impact your financial services company, as well as for readying your company to comply with California commercial loan disclosure rules taking effect December 9, 2022. For questions regarding disclosure rules for Factoring Agreements and Asset Based Financing, contact Robert Zadek and Benjamin Heuer.



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