

Remember: Depository Institutions are Exempt from CA's New Commercial Financing Disclosure Rules

California's new commercial financing disclosure regulations become effective on December 9, 2022. Previously, on June 9, 2022, California's Office of Administrative Law approved the final regulations the Department of Financial Protection and Innovation (DFPI) issued to implement California's Commercial Financing Disclosures law (Division 9.5 of the Financial Code Sections 22800-22805). The new regulations are published in Title 10 California Code of Regulations Sections 900-956. These regulations require a commercial financing "provider," including California finance lenders to disclose certain information to "recipients" in connection with an extension or offer of "commercial financing." A commercial financing "provider" generally means a person who extends a specific commercial financing offer. A "recipient" is defined as a person who is presented a commercial financing offer equal to or less than \$500,000. Thus, the law primarily applies to CFLs and brokers.

Specifically, under California Financial Code Section 22801, the law exempts the following:

- Depository institutions;
- Lenders regulated under the federal Farm Credit Act;
- Transactions secured by real property;
- Transactions 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 \$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 no more than five commercial financing transactions in California in a 12-month period that are incidental to the business of the person relying upon the exemption.

While depository institutions are exempt from the statute, an institution that has affiliates or subsidiaries that are CFLs may want to inform them about the finalized regulations and fast-approaching effective date.

The final rule is available on the DFPI's website at <https://dfpi.ca.gov/regulations-opinions-releases/#final>. Aldrich and Bonnefin PLC is available to assist CFLs with implementing the new California commercial financing disclosures, including creating and reviewing those disclosures and determining what is and what is not a finance charge, or reviewing disclosures prepared by a CFL. Contact Mark Aldrich (MAldrich@ABLAWyers.com), Joel Cook (JCook @ABLAWyers.com) or Stephanie Shea (SShea@ABLAWyers.com), or call them at 800-742-3600, for assistance.

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