

## Commercial Lending Update

NOVEMBER 2021

### **DFPI MODIFIES COMMERCIAL FINANCING DISCLOSURE PROPOSAL (AGAIN – THE FOURTH TIME’S A CHARM!)**

Back in 2018, the California legislature passed and the governor signed a bill<sup>1</sup> that added commercial lending disclosure requirements to the California Financing Law<sup>2</sup>. These disclosure requirements apply to a non-depository institution that offers commercial financing of \$5,000 – \$500,000 that is not secured by real property to businesses principally directed or managed from California<sup>3</sup>. However, these disclosure requirements are not effective until the Department of Financial Innovation and Protection (DFPI) issues implementing regulations<sup>4</sup>. Any covered lender that is also licensed under the California Financing Law will be subject to DFPI examination and enforcement for any violation of these new requirements, once implemented.<sup>5</sup>

The DFPI originally proposed regulations<sup>6</sup> to implement the disclosure requirements in October 2020 and, on November 5, 2021, modified those proposed regulations for a fourth time. The comment period to the proposed regulations ends on November 22, 2021<sup>7</sup>.

In this proposal, the DFPI provides more detailed definitions of “average monthly cost” and “estimated monthly cost.” They also propose a more

general footer in the disclosures – instead of, for example, “California law requires this information to be provided to you to help you make an informed decision,” the DFPI is proposing, “Applicable law requires this information to be provided to you to help you make an informed decision.” Perhaps the DFPI is proposing this change to make the disclosures more universal and not a California-specific disclosure.

To a large extent, the proposed regulations will not just cross-reference TILA and Regulation Z, but go further by, for example, prescribing underwriting methods and requiring, to a certain extent, enhanced disclosures. The penalties will also be pretty severe – for willful violations, a \$10,000 fine and up to one year in jail.

Contact Stephanie Shea (**SShea@ABLawyers.com**), Mark Aldrich (**MAldrich@ABLawyers.com**), or Joel Cook (**JCook@ABLawyers.com**) with questions.

<sup>1</sup> Senate Bill 1235.

<sup>2</sup> Specifically, SB 1235 added Division 9.5 (§§ 22800 - 22804) to the California Financial Code.

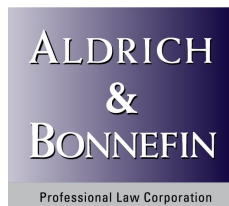
<sup>3</sup> Cal. Fin. Code §§ 22800(d), (e) and (n); 22801(a) and (c); Proposed 10 CCR § 954.

<sup>4</sup> Cal. Fin. Code § 22804.

<sup>5</sup> Cal. Fin. Code. § 22805.

<sup>6</sup> Proposed 10 CCR §§ 900-956.

<sup>7</sup> Refer to <https://dfpi.ca.gov/regulations-opinions-releases/>



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