

PUBLICATION

Countdown Begins for Compliance with New York's Commercial Finance Disclosure Law as New York Issues Final Rule

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The New York State Department of Financial Services issued its final rule on February 1, 2023, implementing the state's new Commercial Finance Disclosure Law. Commercial financing providers that are subject to the law have a six-month grace period to implement the new disclosure requirements before enforcement commences on August 1, 2023. Providers who fail to comply could face a civil penalty of up to \$2,000 for each violation or \$10,000 for each willful violation.

For transactions governed by the law, financing providers must provide potential borrowers with written disclosures containing certain cost of credit terms, including the amount financed, finance charge, APR, term, and possible fees and charges. Although similar to disclosure laws in other states in many ways, New York's law covers transactions with an even higher dollar threshold of \$2.5 million, compared to California's \$500,000 and Utah's \$1 million thresholds.

Interestingly, the final rule contained a few unexpected changes. One such change limits the number and nature of entities covered by the law. The proposed rule excluded banks and credit unions, but included non-bank subsidiaries of banks and credit unions. After previously rejecting requests to broaden the exclusion, the Department changed the rule to exclude all majority-owned subsidiaries of banks and credit unions. The revised definition also exempts the subsidiaries of federally chartered banks, banks chartered by other states, and all federally chartered and state-chartered credit unions.

Another change in the final rule relates to the geographical scope of transactions subject to the law. Under the proposed rule, the law would have applied to transactions where the recipient or provider is principally directed or managed from New York. The final rule narrowed the scope to transactions where the recipient is principally directed or managed from New York – or is a legal resident of New York if the recipient is a natural person. Thus, transactions involving borrowers outside New York will no longer be covered.

Baker Donelson has a team focused on helping our clients implement these disclosure requirements and draft Offer Summaries, as well as advising about any issues related to the disclosure laws in New York. If you have any questions, please contact [Bonnie L. Michael](#), [Dylan W. Howard](#), or any other member of Baker Donelson's Financial Services Transactions team.