

## LAW OFFICES OF PAUL SOTER

### Client Alert: Commercial Financing Disclosures October 18, 2022

Several states have begun to require disclosures for potential borrowers of smaller commercial loans financing. At present, for states have enacted such legislation: California, New York, Utah, and Virginia. See chart below.

This is urgent as to California commercial lenders, factors, and merchant cash advance providers. California's disclosure rules (based on SB 1235) take effect on December 9, 2022. You need to get ready now!

I have made a bandwidth-based decision to outsource compliance with these rules to my colleagues Nancy Thomas and Calvin Funk at Morrison Foerster. They have been closely following SB 1235 and the regulations implementing California's commercial financing disclosures law. They are offering clients well-annotated sample disclosures along with a brief handbook summarizing the key high-level points regarding the disclosure law for a fixed fee of \$3,500. They have also been helping clients work through ad hoc questions or more nuanced issues related to California's commercial financing disclosures and similar laws in other states (e.g., NY, UT, and VA). Their contact information is copied below. I am also happy to make a personal introduction by phone or Zoom.

The Morrison Foerster team is also going to be hosting a webinar on the California commercial financing disclosure laws on Tuesday, October 25, 2022 from 10:00 – 11:00 a.m. PDT/1:00 – 2:00 p.m. EDT. You can register for that free event here:

[https://mofo.zoom.us/webinar/register/WN\\_gaZberHFR9Kwn\\_WXOaFXfg](https://mofo.zoom.us/webinar/register/WN_gaZberHFR9Kwn_WXOaFXfg)

Nancy and Calvin have also published a series of client alerts on this issue that are available at the links below:

- SB 1235:

<https://www.mofo.com/resources/insights/181008-california-financing-disclosure>

- DFPI Final Regulations:

<https://www.mofo.com/resources/insights/220628-california-commercial-financing-disclosure-regulations>

<https://www.mofo.com/resources/insights/220721-california-commercial-financing-disclosure-regulations>

MCA: <https://www.mofo.com/resources/insights/220913-square-peg-round-hole-mca-disclosures>

- DFPI Proposed UDAAP Regulations

<https://www.mofo.com/resources/insights/220630-california-dfpi-issues-proposed-udaap-regulations>

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## Commercial Financing Disclosure Rules Summary

as of October 1, 2022

California: Effective 12/9/22	New York: Regulations still pending: cannot be effective until at least 7/1/23	Utah: Effective 1/1/23	Virginia: Effective 1/1/22
<p>Detailed TiLA-like disclosures for commercial financing of &lt;\$500k for non-real estate-secured:</p> <ul style="list-style-type: none"> <li>• Commercial loans</li> <li>• Commercial lines of credit</li> <li>• Factoring</li> <li>• Merchant cash advance</li> <li>• Asset-based financing</li> </ul> <p>Applies if recipient's business is "principally directed or managed from California."</p> <p>Disclosures include: amounts provided, payment schedule, APR's, terms, average monthly costs, prepayment rules, etc. Must be made:</p> <ul style="list-style-type: none"> <li>• At the time of extending a financing offer; and</li> <li>• Again later in the financing negotiating process if the terms of the offer change.</li> </ul> <p>Applies to non-bank providers/brokers of loans to banks.</p>	<p>Will apply if the financing provider or recipient is principally directed from NY, or if the provider negotiated the financing offer from NY. If the loan is subject to &gt;1 conflicting disclosure (e.g., a NY provider offers financing to a CA recipient), the NY law will defer to the home state of the recipient. Brokers who act on behalf of principals that are exempt entities will share in the principal's exempt status. Financing recipients must be provided notice when the servicing rights of the commercial financing are transferred.</p> <p>Contents of disclosures TBA, but are expected to be similar (but not identical to) CA's.</p>	<p>Covers "Providers" who make &gt;5 transactions/ Calendar year. Must register with the DFI, give disclosures for commercial financing transactions. Includes A/R purchasers, persons who broker on-line to banks. N/A to real estate-secured transactions, loans &gt;\$1mm, various dealer financing plans.</p> <p>Disclosures include amounts provided; dollar cost; payment schedule; amounts, and calculation methods; prepayment rules, broker fees, etc. Disclosures must be provided before loan consummation.</p> <p>Open-end: (1) prior to the consummation, and (2) again within 15 days after the end of each month in which funds are disbursed under the plan.</p>	<p>Merchant cash advance purchasers and brokers must:</p> <ul style="list-style-type: none"> <li>• Qualify to do business in VA</li> <li>• Register with the VA State Corporation Commissioner;</li> <li>• Provide disclosures at the time of extending a MCA purchase offer</li> </ul> <p>Disclosures include amounts provided; the disbursement amount, if different; the finance charge; the total repayment amount, as described; the estimated number of payments; the payment amounts, based on the projected sales volume, or a description of the method used to calculate the amounts and frequency of payments and payment method; a description of all other potential fees and charges not included in the finance charge; prepayment information; collateral requirements or security interests; whether the provider will pay compensation directly to a broker and the amount of compensation</p>