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CHRISTOPHER K.

FRIEDMAN

NASHVILLE:

615.949.2252

CHRIS.FRIEDMAN@

HUSCHBLACKWELL.COM

ALEXANDRA MCFALL

NASHVILLE:

615.949.2240

ALEX.MCFALL@

HUSCHBLACKWELL.COM

Connecticut Releases New Guidance on Commercial Financing Disclosures: What You Need to Know

Connecticut's commercial financing disclosure law, An Act Requiring Certain Financing Disclosures, was signed into law on June 28, 2023, and will take effect on July 1, 2024. The law applies to sales-based financing of \$250,000 or less and requires certain commercial finance providers to register with the state. Under the statute, "sales-based financing" is defined as:

"A transaction that is repaid by the recipient to the provider over time (A) as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the volume of sales made or revenue received by the recipient, or (B) according to a fixed payment mechanism that provides for a reconciliation process that adjusts the payment to an amount that is a percentage of sales or revenue..."

In other words, Connecticut's disclosure regime applies only to revenue-based financing and does not apply to products such as traditional loans or factoring.

On June 10, 2024, just weeks ahead of the compliance deadline, the Connecticut Department of Banking issued new guidance on the disclosure requirements. We'll start by recapping what we already know about the disclosures and then review the new guidance.

What we already know

The law requires providers to deliver disclosures to recipients of certain commercial financing offers. Exempt entities include banks, credit unions, and their affiliates, among others. The law also exempts certain types of transactions and limited activities within a 12-month period. Providers must disclose the following:

1. Total financing amount
2. Fees deducted or withheld from recipient
3. Finance charges
4. Total repayment amount
5. Estimated repayment period
6. Payment schedule
7. Description of all additional fees
8. Description of collateral requirements or security interests
9. Broker compensation
10. Prepayment charges

Additional disclosure requirements apply to refinancing transactions. Unlike similar laws in California and New York, Connecticut does not mandate the disclosure of the annual percentage rate (APR). Violations of the Connecticut law are punishable by injunction and civil penalties of up to \$100,000 per violation.

June 10 Connecticut Department of Banking guidance

On June 10, 2024, the Connecticut Department of Banking released further guidance to clarify the disclosure requirements. Key points from this guidance include:

Connecticut-specific disclosure form. Covered providers must use the disclosure format specified in Appendix A of the guidance. Connecticut's form differs from those used in California and New York, necessitating the development of a new form for Connecticut. While the law allows providers to use another state's commercial financing disclosure forms if their standards are considered equivalent or superior to Connecticut's, the department's new guidance states that it has not concluded that any other states meet these criteria; therefore, providers cannot currently use disclosure forms from other states to comply with Connecticut's disclosure law.

No-action period. Recognizing the short timeframe for compliance, the department has adopted a no-action position for specific offers of commercial sales-based financing issued between July 1, 2024, and September 30, 2024. During this period, providers will not face enforcement actions for failing to

meet the new disclosure requirements or for not obtaining the recipient's signature on the disclosures. This grace period allows providers to adapt their practices to the new requirements without immediate penalty.

Connecticut's law also prevents contractual provisions that waive a recipient's right to notice, judicial hearing, or certain prior court orders concerning prejudgment remedies. Additionally, it prohibits revoking, withdrawing, or modifying a specific offer of financing for three calendar days, except under certain circumstances. The department's no-action position does not apply to these provisions, meaning providers can face enforcement action starting on July 1 for noncompliance with these rules.

What this means for you

For Connecticut providers subject to the law, this new guidance necessitates adapting operations to use a new form. The brief grace period applies only to the specific disclosure requirements and obtaining the recipient's signature on the disclosures. All other provisions of the law will take effect as scheduled on July 1, 2024.

Contact us

If you have questions regarding this regulatory guidance, please contact Alex McFall, Chris Friedman, or your Husch Blackwell attorney.