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New and upcoming laws and regulations

Last month, we reported several laws scheduled to take effect this year. The first was the Commercial Financing Disclosure Law in Missouri. We have previously summarized this statute for commercial finance brokers who engage in more than five commercial financing transactions in a calendar year. The registration and disclosure requirements become effective on February 28, 2025, or six months after the Missouri Division of Finance announces whether it will promulgate rules, which it must do by February 28. As of this week, it appears that the law will take effect without such additional rules.

Missouri joins a growing trend of states enacting disclosure laws for commercial, non-real estate secured transactions. More detail is provided below for each one. However, the common themes include: exempting real-estate secured transactions and depository institutions; only applying to amounts over \$250,000 or \$500,000; and requiring disclosures of the principal loan amount and total amount financed, interest amount to be paid monthly and in total, calculation of interest, payment schedule, prepayment penalties, and itemization of costs, fees, deductions, and withholding. We anticipate that this trend will continue, with more states passing similar laws after observing the effect of various disclosure requirements (such as registration with a state agency, the variation in dollar amounts for exemption, exempting providers of less than five transactions per year, industry-specific inclusion or exemption, disclosing collateral and security interests and prepayment penalties). State legislatures may also continue to delegate authority to state agencies to develop more detailed rules for disclosure and enforcement. As we have seen in Missouri, however, that can lead to uncertainty as to the timing and precise effects of the law.

1. California passed SB 1235 in 2018, which took effect in December 2022 after the California Office of Administrative Law approved regulations proposed by the Department of Financial Protection and Innovation. California's law requires providers of commercial financing to provide disclosures to small businesses, including the total amount of funds provided, the total dollar cost of financing, the term, the method, frequency, and amount of payments, prepayment penalties, and until recently, the total cost of financing as an APR. This law applies to financings of less than \$500,000 and generally exempts depository institutions.
2. As we have previously reported, Connecticut passed its commercial financing disclosure law, An Act Requiring Certain Financing Disclosures, in June 2023, which took effect in July 2024. In June 2024, the Connecticut Department of Banking issued guidance for compliance with the Act. Connecticut's law applies to commercial financing for amounts less than \$250,000 and exempts depository institutions. Required disclosures include the total financing amount, fees deducted or withheld, finance charges, total repayment amount, estimated repayment period, payment schedule, description of fees, description of collateral or security interests, broker compensation, and prepayment charges.
3. Florida passed the Florida Commercial Financing Disclosure Law in 2023, which took effect in 2024. Florida's law applies to commercial financing in amounts less than \$500,000 and exempts banks and real estate transactions. Required disclosures include the total amount of financing, itemization of deductions and withholdings, total amount owed, total cost of financing, the manner, frequency, and amount of each payment or methodology for payments with variable rate interest, and prepayment rights and penalties.
4. Georgia amended Title 1, Chapter 10 of its Code to include commercial disclosure requirements in 2013, regulating transactions beginning in 2024. Georgia's law applies to commercial financing of amounts less than \$500,000 and exempts real estate transactions and depository institutions. Like Missouri's law, it regulates providers of five or more commercial financing transactions within 12 months. Required disclosures include the total amount of funds provided, amounts deducted, withheld, used to satisfy a prior balance, or paid to a third party, the total amount paid to the provider, the total dollar cost of the transaction, the manner, frequency, and amount of each payment, with the same details for an initial payment on a variable interest rate, and prepayment costs.
5. Kansas enacted the Commercial Financing Disclosure Act in 2024. Kansas' law exempts transactions over \$500,000, depository institutions, and real estate transactions. Kansas also defines a provider as a person who consummates more than five commercial financing transactions to businesses located in the state within a calendar year. This differs from the states that use a rolling twelve-month period. Kansas' law requires disclosure of the total

amount of funds provided and disbursed, total of payments, total dollar cost of financing, the manner, frequency, and amount of each payment, and costs or discounts for prepayments.

6. New York passed the Commercial Financing Disclosure Law in February 2023, which took effect in August 2023 with regulations promulgated by the Department of Financial Services. New York's law requires disclosures for commercial financing in amounts up to \$2,500,000, the highest of the nine laws evaluated here. Financial institutions, including banks, credit unions, trust companies, and industrial loan companies are exempted from the disclosures, as well as providers who make no more than five commercial finance transactions in a 12-month period. Real estate transactions are also exempt. Required disclosures include the total amount financed, a total and an itemized finance charge, APR, term, total repayment amount, amount and frequency of payments, fees and charges, prepayment penalties, and collateral or security interests.
7. Utah passed the Commercial Financing Registration and Disclosures Act in 2022, and certain provisions took effect in 2023. Like Missouri's law, Utah requires providers of commercial financing to register with the state. Utah's law applies to providers of commercial loans making more than five commercial financing loans in any calendar year. This law applies to transactions under \$1,000,000, the second highest of the nine laws here. Like the others, real estate loans are exempt. Required disclosures include the total amount of funds provided, total amount disbursed to the borrower, total amount paid to the lender, total amount of the transaction, the manner, frequency, and amount of each payment (or the initial payment for variable rate loans), costs or discounts for prepayment, amounts paid to brokers, and methodology for calculating variable payment amounts.
8. Virginia enacted a disclosure law more limited than the others here, as it only applies to sales-based financing. The law defines this as a transaction repaid by a Virginia business as a percentage of sales or revenue, which results in varying payment amounts. This law applies to at least some types of merchant cash advances as well as loans. Like Missouri and Utah, providers and brokers are required to register with the commissioner of financial institutions. Exemptions include financial institutions, providers, and brokers with no more than five applicable transactions in a 12-month period, and transactions of amounts more than \$500,000. Disclosure requirements include the total amount and disbursement amount of sales-based financing, the finance charge, the total repayment amount, number of payments, payment amounts based on projected sales volume, fees and charges, prepayment information, collateral and security interests, and disclosure of compensation to a broker.

If you have questions about the new law in Missouri, please reach out to Chris Friedman, Alex McFall, or another member of the Husch Blackwell team.

Other key upcoming dates

California Annual Report for Commercial Lenders

Effective Date: March 15, 2025

New regulations will require businesses offering commercial financing and other financial services to small businesses, nonprofits, and family farms in California to submit an annual report. This report must detail specific financial transactions conducted in the prior year. Lenders operating in California should start preparing for compliance now.

California Rosenthal Act

Effective Date: July 1, 2025

California will now subject certain commercial finance transactions to the Rosenthal Act, which governs debt collection activities in California. Specifically, the new law expands the act to include commercial debt where the total debt owed to the creditor is no more than \$500,000. Commercial finance companies who are subject to the Rosenthal Act will have to comply with substantial debt collection requirements for certain California transactions.

Dodd-Frank 1071

Key Dates:

- **July 18, 2025:** Tier 1 Covered Financial Institutions (i.e. those originating at least 2,500 covered credit transactions in both 2022 and 2023) must begin collecting data.
- **June 1, 2026:** Filing deadline Tier 1 Covered Financial Institutions

This federal law requires covered finance companies to collect and report data related to certain commercial finance applications and originations. The new law aims to assist regulators detect purported disparate impact discrimination claims by commercial finance companies under the Equal Credit Opportunity Act. Note also that smaller Covered Financial Institutions will have to begin collecting data under Section 1071 in 2026.

NOTE: As reported in this space, the Fifth Circuit Court of Appeals has stayed compliance dates for the 1071 Rule, but only for the named plaintiffs.

The month in review

Changes in CFPB leadership and updates on recent proposed and finalized rules

Last month, we reported that Rohit Chopra remained the CFPB director after the inauguration of President Trump. As of January 31, however, Secretary of the Treasury Scott Bessent replaced Chopra and briefly served as the Acting Director of the CFPB. Russell Vought, the confirmed director of the Office of Management and Budget, is now the acting head of the CFPB. On February 11, the White House announced the nomination of Jonathan McKernan to serve as Director. Mr. McKernan was most recently a member of the Board of Directors at the FDIC.

The new leadership is far from the only change at the CFPB. Acting Director Vought ordered CFPB staff to cease supervision and examination activity and announced the closure of the bureau's headquarters for a week in mid-February. The future of several CFPB rules remains uncertain:

Credit card late fees: Last May, the CFPB finalized a rule that would cap late fees at \$8. Several banks and banking associations sued the CFPB to block the rule. In December, a federal judge rejected the Bureau's request to lift an injunction blocking the implementation of the rule. Now, with a pause on litigation work at the CFPB, the outcome of this rule remains to be seen.

Overdraft fees: the CFPB also finalized a rule in December that would cap bank fees by permitting a cap of \$5, offering overdraft as a courtesy with a fee covering only costs or losses, or conform overdraft loans to lending laws. Banks and banking associations have also sued the CFPB for this proposed rule. The CFPB has filed a motion in the case to pause the case pending a review by Bureau leadership.

Information sharing by data brokers: In December, the CFPB proposed a rule to limit data brokers in selling consumers' personal and financial information for nonessential business purposes and subjecting them to Fair Credit Reporting Act (FCRA) regulation. Whether this rule is abandoned, finalized, or changed is uncertain.

Payment wallet apps and digital funds transfer: The CFPB finalized a rule in November (which took effect in January) that subjected the largest nonbank companies offering digital funds transfer and payment wallet apps to certain federal laws governing large banks and traditional financial institutions. Specifically, the CFPB can now examine these companies in data collection and sharing, disputing transactions, and debanking.

Critical insights from Husch Blackwell

The Future of CFPB and State AG Enforcement: Forecasting Federal and State Enforcement in Consumer Finance Under a Trump Administration

Law360: Short-Term Predictions For The CFPB's Fate Under Trump

New York Amends its Data Breach Notification Law

Global Trade Magazine: Week Five in Trade – More Tariffs to Come?

Trump Administration Moves to Dismantle NEPA

State-By-State Guide to Ag-Gag Legislation

Manufacturing Tomorrow Podcast: Spotlight on Erik Dullea

Eastern District of Kentucky Tolls Compliance Deadlines for § 1033 of the Dodd-Frank Act

CFPB Small Biz Study Brings Fair Lending Considerations

Delete the CFPB? No. Refresh it Instead

New Executive Order Directs DOJ to Pause FCPA Enforcement

January 2025 Trade Law Update

Corporate Compliance Insights: Beyond the Beltway: State AGs Could Chart Bold Enforcement Course

Global Trade Magazine: Week Three in Trade – First 100 Days of the New Administration

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