

## New York Department of Financial Services Alters Effectiveness Date of New Commercial Financing Disclosure Laws

January 3, 2022

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New York's Department of Financial Services (DFS or Department) has used its authority to extend a statutorily-mandated January 1, 2022, effective date.

As we previously reported in our [September 30 Client Alert](#), the DFS issued proposed regulations on September 21, 2021, that will implement statutory requirements related to commercial financing disclosures for certain types of "small" (up to \$2.5 million) commercial financing transactions (the NY DFS Proposal or the Proposal). The Proposal implements New York's Commercial Finance Disclosure Law (CFDL) which was fully enacted in early 2021.

The DFS Proposal was open for a 60-day comment period that closed on December 20, 2020. However, the Proposal stated that final rules, which are necessary to determine the Department's interpretation of a wide-ranging set of requirements, would be issued "in order to facilitate implementation of the CFDL in time for the January 1, 2022 [statutory] deadline." This would have meant that the Department would have issued (and required compliance with) new rules within an 11-day window between the close of the date on which comments were accepted and the effective date of such rules.

On December 31, 2021, Katten received a notice from the DFS that was provided to those who had commented stating that the DFS had "concluded that CDFL obligations do not arise until the Department issues final implementing regulations and those regulations take effect." This is a significant development because it ensures that those lenders affected by the Proposal will not have to modify their software and transaction origination platforms to comply with the explicit statutory provisions in the CFDL for commercial financing transactions beginning January 1, 2022 and then again when final rules are promulgated. This approach is consistent with the approach taken by the California Department of Financial Protection and Innovation in connection with its similar commercial financing disclosure rules that are still in proposed form.

Also see:

["The Effective Date of Article 8 of the New York Financial Services Law,"](#) New York Department of Financial Services, December 31, 2021

["New York Department of Financial Services Issues Proposed Rules Implementing Commercial Financing Disclosure Laws,"](#) Katten, September, 30, 2021

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## CONTACTS

For more information, please contact Katten's [Corporate](#) practice, or either of the following:



**Christina J. Grigorian**  
+1.202.625.3541  
[christina.grigorian@katten.com](mailto:christina.grigorian@katten.com)



**Claudia Callaway**  
+1.202.625.3590  
[claudia.callaway@katten.com](mailto:claudia.callaway@katten.com)

# Katten

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