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TYPES NOT MAPPED YET July 06, 2022 | TTR not mapped yet | Stephen J. Grable

New disclosure laws raise concerns for nontraditional lenders: Stephen Grable authors Financial Advisor and BAI Banking Strategies articles

New regulations in the commercial lending space are percolating in New York and across the country with 11 states passing or introducing similar laws through the enactment of commercial finance disclosure law (CFDL) legislation. In articles for *Financial Advisor* and *BAI Banking Strategies*, partner Stephen Grable discusses which states have enacted CFDLs, how these apply, the repercussions for non-compliance and the likelihood the trend will continue to expand.

Stephen points out that in California, New York and Utah, their CFDLs apply broadly to various types of commercial financing, including commercial loans, commercial open-end credit plans, accounts receivable purchase transactions and factoring transactions. “New York and California’s laws extend even further to cover closed-end financing, sales-based financing—including merchant cash advances—and asset-based lending transactions. While Virginia’s law is narrowly tailored only to apply to sales-based financing—particularly providers of merchant cash advances,” he writes.

The trend among state legislatures to propose CFDL laws doesn’t seem to be going away either. “Rather, as regulations are finalized and released in California and New York, the trend will likely expand at a greater pace,” he adds.

Stephen notes that some lenders will not be able to comply with new disclosure requirements, because the lending products they offer don’t conform to them. As a result, some lenders may exit states where they cannot comply with disclosure regulations, potentially leading to less competitive finance in the marketplace and fewer loan products available to small business borrowers.

He advises specialty and non-traditional lenders to monitor closely. “Penalties for noncompliance of enacted and enforceable CFDL laws can be significant, reaching as much as $50,000 in Utah, in the event that the state has provided written notice to a repeat violator regarding use of the same transaction documentation or materials. New York will fine repeat, willful violators as much as $10,000 per violation. In California, a willful CFDL violation could result in a $10,000 fine and one-year imprisonment term.”

The severe penalties for non-compliance are reflective of broader trends in the current economic environment. “As interest rates increase and lending opportunities for small businesses likely narrow, lawmakers will continue to pursue CFDL legislation designed to ensure that small business borrowers understand the terms of available financing. Specialty and non-traditional lenders are recommended to review and consider how underwriting, compliance and regulatory practices may need to be modified or conformed as CFDL laws continue to be pursued.”

Read the full *Financial Advisor* and *BAI Banking Strategies* articles.

authorsTest

stephen

Stephen J. Grable