

# PUBLICATION

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## CFPB Announces Preliminary TILA Preemption Determination Two Days Before California's Commercial Disclosure Laws Go Live

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**On December 7, 2022, the Consumer Financial Protection Bureau (CFPB) issued a Notice of Intent to Make Preemption Determination under the Truth in Lending Act (TILA) specifically regarding whether TILA preempts the New York commercial financing law. The CFPB is also deciding whether to make preemption determinations for similar laws in California, Utah, and Virginia. The CFPB made a preliminary conclusion that the New York law is not preempted by TILA and is requesting public comment by January 20, 2023. A final determination is expected to be issued shortly thereafter.**

The timing of this announcement is particularly interesting, given that California's commercial disclosure law goes live today, December 9, 2022. The California disclosure law requires that, upon approval, a commercial lender (with the exception of banks and limited other exempt entities) that makes an offer for commercial financing of \$500,000 or less on or after December 9 must provide commercial borrowers with an "Offer Summary" outlining the amount funded, APR, finance charge, total payment amount, payment schedule, term, prepayment terms (if applicable), and an itemization of the amount financed. This law applies to any commercial financing, which means accounts receivable purchase transactions, including factoring, asset-based lending, commercial loans, commercial open-end credit, and sales-based lending or lease financing transactions. This law does not apply to consumer transactions (i.e., those that are primarily for personal, family, or household purposes) or "true" leases.

The CFPB reached its preliminary conclusion that preemption does not apply based, in no small part, on the fact that the New York law applies only to commercial transactions and TILA applies only to consumer loans. The agency thus concluded that there was no direct conflict and that technical differences were unlikely to result in consumer confusion. Based on this logic, it appears unlikely that the CFPB will ultimately find preemption.

This process bears careful watching because a preemption determination could rapidly alter the effects of these laws, including the California law already in effect.

Baker Donelson has a team focused on helping our clients draft and implement these Offer Summaries, as well as advising about any related issues related to the disclosure laws in California and Virginia, and soon in New York and Utah. If you have any questions, please contact [Bonnie L. Michael](#), [Dylan W. Howard](#), [Krishna Gohel](#), or any other member of Baker Donelson's Financial Services Transactions team.