

# DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

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Commissioner: Manuel P. Alvarez ♦ (866) 275-2677 ♦ [www.dfpi.ca.gov](http://www.dfpi.ca.gov) ♦  
E-mail: [ASK.DFPI@dfpi.ca.gov](mailto:ASK.DFPI@dfpi.ca.gov)

The Department of Financial Protection and Innovation (DFPI) serves as California’s primary regulator of financial service providers and products. DFPI was previously known as the Department of Business Oversight (DBO) until September 25, 2020, when Governor Newsom signed [AB 1864 \(Limón\) \(Chapter 157, Statutes of 2020\)](#), which renamed the Department of Business Oversight to the Department of Financial Protection and Innovation. The bill allowed DFPI to retain all the powers, duties, responsibilities, and functions of DBO.

As part of Governor Brown’s 2012 “Governor’s Reorganization Plan (GRP),” DBO (now DFPI) was formed through the merging of the Department of Corporations (DOC) and the Department of Financial Institutions (DFI). DFPI operates within the Business, Consumer Services and Housing Agency. DFPI’s executive officer, the “Commissioner of Financial Protection and Innovation,” oversees the Department. Both DOC and DFI continue to operate as individual divisions within DFPI and are led by a Senior Deputy Commissioner of Corporations and Financial Institutions.

DFPI, as a whole, seeks to provide services to businesses and protection to consumers involved in financial transactions. The rules promulgated by DFPI are outlined in Division 3, Title 10 of the California Code of Regulations (CCR). Its statutory jurisdiction includes the Corporate Securities Law of 1968 (Corporations Code section 25000, et seq.), which requires the

“qualification” of all securities offered and/or sold in California. “Securities” are defined quite broadly and may include business opportunities in addition to more traditional stocks and bonds. Many securities may be qualified through compliance with the federal securities acts of 1933, 1934, and 1940. If the securities are not under federal qualification, the Commissioner may issue a permit for their sale in California.

The Commissioner also enforces a group of more specific statutes involving other business transactions: the California Financing Law (Financial Code section 22000 et seq.); the California Residential Mortgage Lending Act (Financial Code section 50000 et seq.); the Franchise Investment Law (Corporations Code section 31000 et seq.); the Security Owners Protection Law (Corporations Code section 27000 et seq.); the California Commodity Law of 1990 (Corporations Code section 29500 *et seq.*); the Escrow Law (Financial Code section 17000 et seq.); the Check Sellers, Bill Payers and Proraters Law (Financial Code section 12000 et seq.); the Securities Depository Law (Financial Code section 30000 et seq.); and the Capital Access Company Law (Corporations Code section 28000 et seq.).

DFPI serves as the state’s primary regulator of financial services, products, and professionals, and protects consumers and services in businesses engaged in financial service transactions. At the end of 2019, DBO maintained oversight of 23 financial service industries and licensed and supervised more than 360,000 individuals and businesses, including the licensure of 426 mortgage lenders, the registration of 2,674 broker-dealer firms, and the registration of 3,729 investment adviser firms.

DFPI consists of the following divisions: (1) The Administrative Division, which provides DFPI with administrative support services; (2) The Consumer Services Division, which develops public affairs strategies; (3) The Division of Corporations; (4) The Division of Financial

Institutions; (5) The Enforcement Division, which enforces the laws administered by DFPI; (6) The Information Technology Office, which is responsible for technology support services; (7) The Legal Division, which includes all in-house legal counsel; (8) The Legislation Division, which monitors and tracks all bills related to DFPI and provides guidance on legislative issues; and (9) The Policy Division, which formulates institutional policy for DFPI.

The Division of Corporations is subdivided into the following programs: (1) The Broker-Dealer/Investment Adviser Program, which licenses and regulates broker-dealers in the state; (2) The Financial Services Program, which is responsible for licensure of payday and finance lenders; and (3) The Mortgage Lending Program, which is responsible for the licensure of residential mortgage lenders.

Specifically, the Division of Financial Institutions is subdivided into the following programs: (1) The Banking Program, which licenses and regulates trust companies and commercial banks; (2) The Credit Union Program, which licenses and regulates state-chartered credit unions; and (3) The Money Transmitter Program, which licenses and regulates money transmitters and issuers of money instruments such as money orders, travelers' checks, and value cards.

The Division of Financial Institutions' regulatory purview extends over domestic and foreign banks, industrial banks, credit unions, money transmitters (Western Union, PayPal, and others), premium finance companies, and trust companies and departments. The Division of Corporations' purview extends over broker-dealers and investment advisers, California Deferred Deposit Originators "payday lenders," California residential mortgage lenders, originators and servicers, finance lenders, Property Assessed Clean Energy (PACE) program administrators, responsible small-dollar loans (pilot programs), and student loan servicers. DFPI has two primary regulatory responsibilities: protect consumers and protect the health of financial service markets.

On June 29, 2020, Governor Newsom [appointed](#) Bret Ladine as the new General Counsel at DFPI. Mr. Ladine served as DBO’s acting general counsel since 2019 and as an assistant general counsel since 2016.

On July 15, 2020, Governor Newsom [appointed](#) Jennifer Rumberger as deputy Commissioner of the legal division at DFPI, where she has served as attorney IV since 2015 and was attorney III from 2007 to 2015.

On September 3, 2020, Governor Newsom [appointed](#) Maria Luisa Cesar as DFPI’s new Deputy Commissioner of Communications.

## **HIGHLIGHTS**

### **Legislature Enacts California Consumer Financial Protection Law and Reorganizes and Renames the Department of Business Oversight as the Department of Financial Protection and Innovation**

On September 25, 2020, Governor Newsom signed a series of bills to establish a California consumer financial protection watchdog agency, modeled after the federal Consumer Financial Protection Bureau, that is designed to expand the state’s authority and resources to protect Californians against abusive and predatory financial products and services. Specifically, [AB 1864 \(Limón\)](#), as amended August 25, 2020, amends sections 300, 320, 321, 326, and 351, adds Division 24 to, and repeals section 371 of the Financial Code to impose these significant structural changes to DBO.

Of note, section 321 renames the DBO as the DFPI, which will retain all the powers, duties, responsibilities, and functions of DBO. AB 1864 also adds new Division 24 to the Financial Code to enact the California Consumer Financial Protection Law (CCFPL), which, according to the bill’s

author, expands DFPI’s ability “to improve accountability and transparency in the California financial system and promote nondiscriminatory access to responsible, affordable credit.”

New section 90000 contains a series of legislative findings documenting the need for a consumer financial services regulator in California, particularly in this era of the COVID-19 pandemic, when consumers are particularly vulnerable to financial abuse, and declares the intent of the legislature to “strengthen consumer protections by expanding the ability of [DFPI] to improve accountability and transparency in the California financial system, provide consumer financial education, and protect consumers from abusive financial practices, while prioritizing the prevention of unethical businesses from harming the most vulnerable populations” in California.

The CCFPL requires DFPI to regulate the provision of various consumer financial products and services and to exercise nonexclusive oversight and enforcement authority under California consumer financial laws relating to “persons offering or providing consumer financial products or services in [the] state,” and, to the extent permissible, under the federal consumer financial laws.

The CCFPL also makes it unlawful for “covered persons” (persons who engage in offering or providing “consumer financial products or services,” their service providers, and affiliates when acting as a service provider) to engage in unlawful, unfair, deceptive, or abusive acts or practices with respect to consumer financial products or services, or offer to provide a consumer a financial product or service that is not in conformity with any consumer financial law. Under the CCFPL, “covered persons” includes entities not previously subject to DBO oversight, including debt collectors, credit reporting agencies, certain fintech companies, and some merchants who extend credit directly to consumers. The CCFPL allows DFPI to issue and enforce rules defining Unfair, Deceptive, or Abusive Acts or Practices (UDAAP), as they relate to commercial financing or financial products and services offered or provided to small business recipients, nonprofits, and

family farms. This rulemaking may include data collection and reporting. No part of the CCFPL limits the authority of any district attorney or city attorney lawfully permitted to bring actions to enforce California’s Unfair Competition Act, or the authority of the Attorney General to prosecute violations of civil or criminal laws.

Under the CCFPL, DFPI has the power to bring administrative and civil actions to enforce the Consumer Financial Protection Act of 2010, issue subpoenas, enact regulations, hold hearings, issue publications, conduct investigations, and implement outreach and education programs. DFPI is allowed to enact regulations requiring any covered person to submit a registration, pay a fee to DFPI, submit background checks for certain personnel, and obtain a bond or satisfy other financial standing requirements. All moneys collected under the CCFPL must be deposited into the newly created Financial Protection Fund.

The CCFPL also requires DFPI to establish the Financial Technology Innovation Office which will “promote innovation and consumer access within [the] financial technology services sector.”

Governor Newsom signed AB 1864 on September 25, 2020 (Chapter 157, Statutes of 2020). The name change of the Department became effective immediately upon signing the bill; the remainder of the provisions of the bill become effective on January 1, 2021.

## **Department of Financial Protection and Innovation to License Debt Collectors and Buyers**

[SB 908 \(Wieckowski\)](#), as amended August 24, 2020, amends sections 1788.11 and 1788.52 of the Civil Code, and adds Division 25 to the Financial Code, titled “Debt Collection Licensing Act,” relating to debt collectors. Specifically, the bill requires debt collectors and buyers operating in California to be licensed by the Department of Financial Protection and Innovation

(DFPI). The bill also requires debt collection attorneys to be licensed by DFPI and authorizes the Department to take borrowers' complaints and enforce violations. The bill will give consumers a single location to check whether such companies are licensed and whether they have been subject to any enforcement actions, including license suspensions or revocations. Funding will come from licensing fees on the industry.

According to its author, the bill will ensure "greater consumer protection through enhanced oversight over debt collectors and debt buyers operating in the state." In addressing the necessity of this bill, the author cited the fact that California has been in the minority of states that did not license debt collectors.

The author also noted that despite federal and state Fair Debt Collection Practices Acts, collection practices consistently remain a top consumer complaint. Current enforcement of the state's debt collection laws relies on either a consumer suing a collection company or the California Attorney General (AG) accepting a consumer complaint about debt collection and debt buying practices. However, the AG generally only pursues major violations of the law, rather than engaging in every complaint filed.

With minor exceptions, SB 908 does not add any new requirements on debt collectors and debt buyers; it instead adds a layer of regulatory oversight over debt collectors and debt buyers who are already subject to state law, but previously not subject to licensure. The bill's author suggests that in layering this licensing and examination framework over existing state law requirements, California will be better able to ensure that debt collectors and debt buyers comply with existing state law.

[AB 1864 \(Limón\) \(Chapter 157, Statutes of 2020\)](#), signed by Governor Newsom on September 25, 2020, renamed the Department of Business Oversight (DBO) to the Department of

Financial Protection and Innovation (DFPI). AB 1864 gives DFPI authority over previously-existing DBO licensees and new oversight authority over entities which were not previously required to be licensed in California but which offer or provide financial products or services in California, deemed “new covered persons.” Under SB 908, debt collectors now make up 7,000 of the 9,000 new covered persons the DFPI has authority over.

Governor Newsom signed SB 908 on September 25, 2020 (Chapter 163, Statutes of 2020).

The Debt Collection Licensing Act becomes effective on January 1, 2022.

## **Former Department of Business Oversight Files Order to Ban Eco Technology, Inc. from PACE Industry**

On May 27, 2020, DBO (now DFPI) issued a [Desist and Refrain Order](#) to ban Eco Technology, Inc. from serving as a solicitor in California’s PACE program.

PACE is a financing product where homeowners finance clean energy projects to their property such as solar panels, water heaters, and windows. Homeowners enter into assessment contracts with public agencies for voluntary contractual assessments imposed on the real property. The Department licenses and regulates PACE program administrators in California. “Program administrators” are those persons administering a PACE program on behalf of, and with the written consent of a public agency. A PACE solicitor is a person authorized by a program administrator to solicit a property owner to enter into an assessment contract.

According to the Desist and Refrain Order, Eco Technology, Inc., while serving as a solicitor for a PACE program administrator, and the contractor that performed the work on behalf of the administrator, allegedly engaged in a pattern of fraud that included wrongfully promoting PACE as a “free government program,” forging signatures on contracts, and impersonating



homeowners on contract confirmation calls. The Department previously issued a demand to Eco Technology, Inc. on May 15, 2020 to discontinue its illegal practices and stop soliciting PACE contracts.

A Department investigation of thirty complaints filed in 2018 and 2019 against Eco Technology, Inc. found that the homeowners alleged they had been urged to sign up quickly for a “free government program.” The complaints also demonstrated that an Eco Technology, Inc. solicitor would ask homeowners for personal financial information such as tax statements and paycheck stubs to determine if they qualified for the “free government program.” Contracts were then later submitted to PACE program administrators with forged electronic signatures. A number of the complaints also indicated that Eco Technology, Inc. created email addresses and phone numbers in order to have the financing documents routed to them rather than the homeowners. Additionally, several homeowners said the voice on a recorded contract “completion call” required under state law was not their voice but that of an impersonator.

The Department found that Eco Technology, Inc. sold its products at inflated prices, three to five times the usual industry rate. Eco Technology, Inc. also used high-pressure tactics on mostly elderly homeowners and those who did not speak English as a primary language.

The order for Eco Technology, Inc. to desist and refrain from engaging in the business of a PACE Solicitor became effective immediately on May 27, 2020.

## **MAJOR PUBLICATIONS**

The following reports have been conducted by or about DFPI during this reporting period:

- [\*Annual Report of Activity under the Pilot Program for Increased Access to Responsible Small Dollar Loans\*](#), Department of Business Oversight, June 2020 (Pursuant to pursuant to section 22380 of the Financial Code, 2019 Annual Report on the utilization of the Pilot

Program for Increased Access to Responsible Small Dollar Loans; reports that lenders approved 40% more small loans in 2019 over 2017, and 8% over 2018; the annual total principal amount of loans made in 2019 increased by 65% over 2017 and 30% over 2018; borrower applications increased 47% since 2017 and 15% since 2018; also provides information on violations found during examinations, complaints, and recommendations for improving the program.)

- [\*Annual Report of Nonprofit Organizations Facilitating Zero-Interest Consumer Loans\*](#), Department of Business Oversight, June 2020 (Pursuant to section 22067 of the Financial Code, 2019 Annual Report on nonprofit organizations that facilitate zero-interest, low cost loans that includes information on lender participation and activity; reports that 1,591 borrowers applied for loans under the program in 2019—a 32% increase over 2018; 54% of the loans were to borrowers with monthly incomes of \$1,001 to \$3,000; 55 borrowers obtained more than one loan under the program; 6.3% of the borrowers who obtained more than one loan saw their credit score increase by an average of 7.7 points; two exempt participating nonprofit organizations entered into partnerships with 13 partnering organizations in 2019; provides results of examinations, violations, and complaints; and recommendations for improving the program.)

- [\*Annual Report of Activity Under the California Residential Mortgage Lending Act\*](#), Department of Business Oversight, July 2020 (2019 Annual Report that compiles data on residential mortgage lending loans, rates, consumer complaints, foreclosures, and other data elements for calendar year 2019 based on data submitted to the DBO by residential mortgage lenders and mortgage loan servicers licensed under the California Residential Mortgage Lending Act; among other factors, reports that the number of loans originated by licensees in 2019 increased to 552,687 from 365,171 in 2018—a 51.4% increase; the aggregate principal amount of loans

originated in 2019 totaled \$218 billion, up 65.6% over 2018; licensees reported 16,424 consumer complaints concerning non-traditional mortgage loans, a 37.9% increase from 2018.)

- [\*Annual Report of Payday Lending Activity Under the California Deferred Deposit Transaction Law\*](#), Department of Business Oversight, July 2020 (Pursuant to section 23026 of the Financial Code, 2019 Annual Report on payday lenders' activities pursuant to the California Deferred Deposit Transaction Law<sup>1</sup>; among other key statistics, reports that California payday lenders issued 10.2 million loans worth \$2.8 billion to more than 1.6 million customers in 2019—approximately the same amount as 2018; the average dollar amount and average length of payday loans in 2019 remained unchanged at \$250 and 17 days; payday loans charged an average percentage rates (APR) of 369% in 2019—a decline from 376% in 2018; the average number of payday loans per customer held steady at 6.3 from 2018 to 2019; licensees collected \$418.4 million in fees on payday loans in 2019, and of that total 71.3% (\$298.5 million) were paid by customers who took out seven or more payday loans during the year; 48% of payday loan customers had average annual incomes of \$30,000 or less and 29% had average annual incomes of \$20,000 or less.)

## **RULEMAKING**

The following is a status update on recent rulemaking proceedings that DFPI has initiated:

- **Money Transmission Act—Agent of Payee Exemption:** On June 30, 2020, DBO issued a [notice](#) of [modifications](#) to its proposed adoption of sections 80.126.10, 80.126.20, 80.126.30, 80.128, 80.128.10, and 80.130, Title 10 of the CCR to implement the California Money

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<sup>1</sup> The report describes a payday loan transaction as follows: “the consumer provides the originator or lender a personal check for \$300 or less. The lender gives the consumer the money, minus an agreed upon fee. The fee cannot exceed 15% of the amount of the personal check. The lender then defers depositing the consumer’s check for a specific period, which cannot exceed 31 days.”

Transmission Act, for a 15 day comment period. The Department originally published its [Notice of Rulemaking Action](#) on March 6, 2020. *[25:2 CRLR 189–190]* The proposed modifications serve to clarify that “services” include activities performed by charitable organizations that have received tax exemption under section 501(c)(3) of the Internal Revenue Code. The public comment period on the modifications ended July 15, 2020. At this writing, the Department has not taken further action on the proposal.

- **Public Banking Law: Definitions and Application Requirements:** On May 19, 2020, the [extended comment period](#) regarding proposed rulemaking to implement [AB 857 \(Chiu\) \(Chapter 442, Statutes of 2019\)](#), a bill that allows local California agencies to apply for a public bank charter from DBO, ended. *[25:2 CRLR 192-193]* At this writing, the Department has yet to formally notice rulemaking on this topic.

- **PACE Program Administrators and NMLS:** On May 27, 2020, DBO issued a [notice of modifications](#) to proposed regulations to amend various sections in subchapter 6 of Title 10, chapter 3 of the CCR to establish a regulatory scheme for PACE program administrators. The public comment period expired on June 12, 2020. On September 2, 2020, DBO issued a [notice of second modifications](#) to the proposed regulations, after further consideration of public comment. The comment period for the second modifications ended on September 18, 2020. The Department originally published its Notice of Rulemaking Action on October 25, 2019 as part of its efforts to implement [AB 1284 \(Dababneh\) \(Chapter 475, Statutes of 2017\)](#). *[25:2 CRLR 192]* At this writing, the Department has not taken further action on the proposed rulemaking.

- **Commercial Financing Disclosures:** On September 11, 2020, DBO issued a [Notice of Rulemaking Action](#) on [proposed rulemaking](#) to add a series of new sections to Title 10, Chapter 3 of the CCR to implement [SB 1235 \(Glazer\) \(Chapter 1011, Statutes of 2018\)](#), which

establishes a number of disclosures commercial financiers (“providers”) are required to present to recipients at the time of an offer of commercial financing. According to the [Initial Statement of Reasons](#), SB 1235 mandates that the Department draft regulations implementing the specific requirements of the disclosures to be provided to recipients, including: definitions, methods of calculation for certain disclosure items, the method of expressing the annualized rate disclosure, the time, manner and format of the disclosures, and many other details. The notice follows a series of the Department’s informal calls for public input as to the substance of the regulations. [\[25:2 CRLR 193\]](#) The public comment period expired on October 28, 2020, and the Department held a [public hearing](#) on November 9, 2020. At this writing, DFPI has not yet formally noticed any proposed modifications or taken further action on the proposed rulemaking.

## LEGISLATION

- [AB 107 \(Committee on Budget\)](#), as amended August 28, 2020, amends section 12895 of the Government Code to change the Department of Business Oversight’s name to the Department of Financial Protection and Innovation and ensures the authorities vested in DBO transition to DFPI. Governor Newsom signed AB 107 on September 29, 2020 (Chapter 264, Statutes of 2020).
- [AB 376 \(Stone\)](#), as amended August 20, 2020, adds Title 1.6C.10 (commencing with section 1788.100) to the Civil Code to create the Student Loan Ombudsman under DFPI to compile and analyze data on the number of student loan borrower complaints, inform the public about problems concerning borrowers, and submit an annual report to legislative committees, among other things. The bill also allows DFPI to monitor and analyze consumer risks related to the student loan industry. According to the author, this bill will ensure that individuals with student

loan debt are given reliable information, quality customer service, and meaningful access to repayment and forgiveness programs. Governor Newsom signed AB 376 on September 25, 2020 (Chapter 154, Statutes of 2020).

- [AB 1525 \(Jones-Sawyer\)](#), as amended August 21, 2020, adds Chapter 24 (commencing with section 26260) to the Business and Professions Code to create a safe harbor for financial institutions, accountants, and licensed armored cars that provide services to cannabis licensees. The bill also allows state or local authorities or agencies, or joint powers authorities, upon a cannabis licensee's written request, to share certain information with financial institutions designated by the licensee. According to the author, this bill will protect public safety by allowing commercial cannabis businesses to have access to banking services, which in turn makes the businesses less likely to be a target of crime. Governor Newsom signed AB 1525 on September 29, 2020 (Chapter 270, Statutes of 2020).

- [AB 1551 \(Arambula\)](#), as amended August 24, 2020, amends section 22684 of the Financial Code to prohibit PACE program administrators under the jurisdiction of DFPI from including prepayment penalties in PACE assessment contracts or from executing a contract if the property is subject to a reverse mortgage. The bill requires the program administrator to deliver to the property owner a printed copy of existing disclosures, unless the property owner opts for an electronic copy. According to the author, this bill will create further safeguards for homeowners who choose to utilize California's residential PACE programs. Governor Newsom signed AB 1551 on September 25, 2020 (Chapter 156, Statutes of 2020).

The following bills, reported in Volume 25, No. 2 (Spring 2020), died in committee or otherwise failed to be enacted during the 2019–2020 legislative session: [AB 2150 \(Calderon\)](#), relating to the Money Transmission Act; [AB 2304 \(Chen\)](#), relating to maximum charges for filed

papers; [AB 2524 \(Wicks\)](#), relating to suspending or revoking licenses issued under the Check Sellers, Bill Payers, and Proraters Law; [AB 2561 \(Limón\)](#), relating to arranging loans and distributing or sharing marketing materials; and [AB 2633 \(Ting\)](#), relating to financial education programs.

## LITIGATION

- ***In re QuadPay, Inc., CFL File No. 60DBO-110414.*** On April 22, 2020, DBO entered into a [settlement](#) agreement with point-of-sale lender QuadPay, Inc., in which the company agreed to stop making illegal loans, refund more than \$685,000 to California consumers, and pay almost \$69,000 in penalties to the Department. As part of the consent order, the Department acknowledged that QuadPay had submitted an application for a CFL lender license in February 2020, and that the Commissioner would continue to review the application pursuant to section 22109 of the Financial Code.

- ***Commodity Futures Trading Commission, et al. v. TMTE, Inc. and Tower Equity, LLC, et al., No. 3:20-cv-02910-L (N.D. Tex. Sept. 22, 2020).*** On September 22, 2020, the U.S. District Court for the Northern District of Texas [granted](#) a request for a statutory restraining order from DBO and 29 other states barring Metals.com from further sales nationwide, freezing all Metal.com's related assets, and appointing a receiver to take possession of the company and affiliates. The order comes as part of a nationwide enforcement action to disrupt Metal.com's fraudulent metals scheme that targeted the elderly and solicited more than \$185 million from seniors and other investors by selling overpriced gold and silver coins nationwide.