

# DEPARTMENT OF BUSINESS OVERSIGHT

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The Department of Business Oversight (DBO) serves as California's primary regulator of financial service providers and products. Part of Governor Brown's "Governor's Reorganization Plan (GRP)" No. 2, which was approved in 2012, it was formed through the merging of the Department of Corporations (DOC) and the Department of Financial Institutions (DFI). DBO operates within the Business, Consumer Services and Housing Agency. DBO's executive officer, the "Commissioner of Business Oversight," oversees the department. Both DOC and DFI continue to operate as individual divisions within DBO and are respectively led by Deputy Commissioners of Business Oversight for the Division of Corporations and the Division of Financial Institutions.

DBO, as a whole, seeks to provide services to businesses and protection to consumers involved in financial transactions. The rules promulgated by DBO are outlined in Division 3, Title 10 of the California Code of Regulations (CCR). Its statutes jurisdictions including the Corporate Securities Law of 1968 (Corporations Code section 25000, *et seq.*), requiring 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.*).

DBO serves as the state's primary regulator of financial services, products and professionals, and protects consumers and services to businesses engaged in financial service transactions. At the end of 2018, the DBO maintained oversight of 24 financial service industries and licensed and supervised more than 360,000 individuals and businesses, including the licensure of 426 mortgage lenders.

DBO consists of the following divisions: (1) The Administrative Division, which provides DBO 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 DBO; (6) The Information Technology Division, which is responsible for technology support services; (7) The Legal Division, which includes all in-house legal counsel; (8) The Policy Division, which formulates institutional policy for DBO, and (9) The Strategic Support Division, which provides licensing support.

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 Corporations is subdivided into the following programs: (1) The Broker/Dealer Investment Advisor 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.

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, PACE program administrators, responsible small-dollar loans (pilot programs), and student loan servicers. DBO has two primary regulatory responsibilities: protect consumers and protect the health of financial service markets. On October 15, 2019, the Office of Governor Gavin Newsom [announced](#) the appointment of Chris Shultz, former Chief Deputy Director at the Department of Consumer Affairs, as Chief Deputy Commissioner at DBO. Chief Deputy Commissioner

Shultz’s position does not require Senate confirmation. Director Shultz’s salary is \$168,000.

DBO currently has vacancies in the following positions: Deputy Commissioner of Administration, Deputy Commissioner of Policy, and Deputy Commissioner of Credit Unions.

## **MAJOR PROJECTS**

### **DBO Proposes Rulemaking Relating To Commercial Financial Disclosures**

On July 26, 2019, DBO issued a [second invitation for comments](#) on proposed rulemaking relating to commercial, financial disclosures (PRO 01-18) to add a new subchapter to Title 10, Chapter 3 of the CCR. The proposed regulations are an effort by DBO to implement [SB 1235 \(Glazer\) \(Chapter 1011, Statutes of 2018\)](#), which establishes a statutory framework of disclosures that commercial financiers (“providers”) must present to recipients at the time of a commercial financing offer. According to DBO’s [first invitation for comments](#), issued on December 4, 2018, SB 1235 defines commercial financing as accounts receivable purchase transactions, including “asset-based lending, commercial loans, commercial open-end credit plans, and lease financing” accepted by recipients for purposes other than personal or familial. Furthermore, the first invitation for comments enumerates the financial disclosures mandated under SB 1235:

- (1) The total amount of funds provided;
- (2) The total dollar cost of financing;
- (3) The term or estimated term;
- (4) The method, frequency, and amount of payments;
- (5) A description of prepayment policies; and
- (6) Until January 1, 2024, the total cost of the financing expressed as an annualized rate.

These new required disclosures, as stated in SB 1235, seek to help “prohibit[] a licensee from making a materially false or misleading statement to a borrower about the terms and conditions of a loan.”

To effectuate the implementation of these disclosures, SB 1235 directs the DBO Commissioner to adopt regulations governing the disclosures and also authorizes the Commissioner to enjoin or impose civil penalties, or both, or enjoin against violators of the law. As stated in the first invitation for comments, SB 1235 vests the Commissioner with the power to enforce SB 1235’s requirements “with respect to any provider licensed under the California Financing Law, commencing with section 22000 of the Financial Code.” According to the [draft text](#) of the proposed rulemaking, the DBO’s regulations establish: definitions of terms used in rules (section 2057); general formatting and content requirements (section 2060); closed-end transaction formatting and content requirements (section 2061); commercial open-ended credit plan disclosure formatting (section 2062); factoring transaction disclosure formatting (section 2063); general factoring disclosure formatting (section 2064); sales-based financing disclosure formatting (section 2065); lease financing formatting and content requirements (section 2066); asset-based lending formatting (section 2067); signature rules (section 2070); thresholds for disclosure (section 2071); rules for calculating disclosures (sections 2089, 2090, 2091, 2092); annualized rate disclosure requirements (section 3000); rules for calculating annual percentage rates (sections 3001, 3002, 3003); defining finance charge (section 3010); asset-based lending general disclosure requirements (section 3020); asset-based lending example transactions (section 3021); and factoring example transactions (section 3022). Consumers are better equipped to make sound fiscal decisions and avoid deceptive lending practices with these

formatting, content, and rule provisions seek to enhance the overall transparency and clarity of commercial financing offers. In addition to these regulatory proposals, DBO published sample disclosure forms for each variation of transaction: (1) [asset-based lending disclosure](#); (2) [closed-end transaction disclosure](#); (3) [general factoring disclosure](#); (4) [open-end credit plan disclosure](#); and (5) [sales-based financing disclosure](#).

In its second invitation for comments, DBO asked for public comment on the draft regulations and sample disclosures. In particular, the DBO requested that members of the public “provide examples to illustrate comments and, where appropriate, offer revised or new language.” As reported in the second invitation for comments, DBO accepted public comments until September 9, 2019, and planned to consider these comments before moving forward with the formal rulemaking process. At the time of this writing, DBO had not yet formally noticed its intention to add the new regulations.

## **DBO Proposes Rulemaking Relating to Oversight of PACE Administrators**

On October 22, 2019, DBO published [notice](#) of its intent to amend various sections in Subchapter 6 of Title 10, Chapter 3 of the CCR to establish licensing requirements for Property Assessed Clean Energy (PACE) program administrators, which are outlined in the [proposed language](#). This initiative was driven by questionable marketing by solar panel manufacturers when financing is secured by the real property involved. According to the [initial statement of reasons](#), the proposed regulations are DBO’s efforts to implement [AB 1284 \(Dababneh\) \(Chapter 475, Statutes of 2017\)](#), which requires “[p]rogram administrators”—entities “administering a PACE program on behalf of, and with the written consent of, a public agency”—to be licensed by the Commissioner of DBO

beginning on January 1, 2019, under the newly renamed California Financing Law (previously called the California Finance Lenders Law). According to AB 1284, the California Financing Law enables property owners to voluntarily contract with public entities and PACE program administrators to facilitate the financing and installation of renewable energy sources permanently fixed to real property. Additionally, AB 1284 prohibits program administrators from approving “assessment contracts”—agreements between property owners and a public agency for the assessment of PACE improvements on a property—without first making a good faith determination that the property owners can reasonably afford such assessments.

As noted in the initial statement of reasons, licensure of PACE program administrators places them on similar regulatory footing as financial lenders and brokers in California. Under AB 1284, PACE program administrators are now subject to many of the regulatory requirements enforced against California financial entities, including: “licensure of business locations, the maintenance and preservation of records, and annual reporting, including filing an annual report under oath; and [prohibition from] making false or misleading statements and unfair business practices.” Likewise, as stated in DBO’s notice of rulemaking, AB 1284 requires program administrators to meet specific enrollment requirements for PACE solicitors and PACE solicitor agents, the general contractors who sell and perform the groundwork for assessment and installation of renewable energy fixtures. Under the law, PACE contractors must meet minimum background, compliance, and training standards to be eligible for PACE enrollment. For those contractors that fail to meet eligibility standards, AB 1284 requires PACE administrators to institute processes to cancel their enrollment.

As stated in its notice of rulemaking, DBO's proposed regulations set forth new standards, requirements, and guidance to expand oversight of PACE program administrators, solicitors, and their agents. According to the notice, DBO seeks to implement rules expanding oversight of PACE administrator advertisements, recordkeeping, document translation, complaint processing, compliance, enrollment, education requirements, annual reporting, and financing. Furthermore, DBO's notice of rulemaking indicates DBO's intention to transition licensure of PACE program administrators from traditional paper applications to licensure through the online Nationwide Mortgage Licensing System (NMLS), a multistate database currently facilitating the licensure of California financial institutions with DBO. In transitioning licensure of all California Financing Law licensees to the NMLS, DBO seeks to obtain uniformity and modernization of the licensure application and maintenance.

Through these regulatory proposals, DBO intends to strengthen consumer protections, prevent consumer default, and curtail the fraudulent activity of deceitful PACE businesses. Noted in DBO's [initial statement of reasons](#), Assemblymember Dababneh, the author of AB 1284, once stated,

A lack of oversight in this fast-growing [PACE] industry puts thousands of Californians at risk of signing assessment contract[s] that they do not have the ability to repay and potentially losing their homes. There is an urgent need to get underwriting standards and DBO oversight into the market as soon as possible to protect California homeowners.

According to its notice of rulemaking, DBO is accepting written comments from the public relating to the proposed rulemaking until December 9, 2019. DBO intends to review public comments before proceeding with this regulatory action. On October 25, 2019, the Office of Administrative Law (OAL) recorded DBO's notice of proposed



rulemaking (Notice File Number Z2019-1015-01) under its [October 2019 Regulatory Notice Register](#).

## **Enforcement Actions (Administrative and Civil)**

DBO took enforcement action against the following business entities for violating California Law:

### [April 2019](#)

- (1) Fiverr International Ltd. (Tel Aviv, Israel)
  - Violation & Charging Sections–Unlawful Escrow Law Activity (Financial Code Section 17200)
  - Action Taken–Stipulation to Desist and Refrain Order (April 16, 2019)
- (2) Sotheby’s Financial Services California, Inc. (New York, New York)
  - Violation & Charging Sections – Unlawful California Financing Law Activity (Financial Code Sections 22159 and 22715)
  - Action Taken – Settlement Agreement (April 24, 2019)
- (3) Subject – Ferrari Financial Solutions, Inc. (Englewood Cliffs, New Jersey)
  - Violation & Charging Sections – Unlawful California Financing Law Activity (Financial Code Sections 22159 and 22715)
  - Action Taken – Settlement Agreement (April 26, 2019)
- (4) Subject – Low VA Rates, LLC (Lindon, Utah)
  - Violation & Charging Sections – Unlawful California Financing Law Activity (Financial Code Sections 22159 and 22715)
  - Action Taken – Supplemental Settlement Agreement (April 30, 2019)

### [May 2019](#)

- (1) Subject – United Mortgage Corp. dba UMC Mortgage Company (Melville, New York)
  - Violation & Charging Sections – Unlawful Residential Mortgage Lending Activity (Financial Code Sections 50314, 50321, and title 10 section 1950.314.6)
- (2) Subject – MCS Mortgage Bankers, Inc. aka Home America Lending Corp. (Patchogue, New York)
  - Violation & Charging Sections – Unlawful Residential Mortgage Lending Activity (Financial Code Section 50327)

- Action Taken – Order Revoking Residential Mortgage Lender License (May 31, 2019)

### June 2019

- (1) Subject – Southwestern & Pacific Specialty Financial, Inc. dba Check N’ Go (Cincinnati, Ohio)
  - Violation & Charging Sections – Unlawful California Financing Law Activity (Financial Code Sections 22712, 22161(a)(1) and (3), and 22337(c))
  - Action Taken – Consent Order (June 5, 2019)
- (2) Subject – Juicy Burgers Temecula, LLC aka Juicy Burgers America (San Diego, CA)
  - Violation & Charging Sections – Unlawful Franchise Investment Law Activity (Corporations Code Section 31110)
  - Action Taken – Desist and Refrain Order (June 12, 2019)
- (3) Subject – CitiMortgage, Inc. (O’Fallon, Michigan)
  - Violation & Charging Sections – Unlawful California Financing Law Activity (Financial Code Sections 22159 and 22715).
  - Action Taken – Stipulation (June 18, 2019)

### July 2019

- (1) Subject – Freelancer Technology Pty Ltd. / Freelancer International Pty Ltd / Freelancer.com (Sydney, Australia)
  - Violation & Charging Sections – Unlawful Escrow Law Activity (Financial Code Section 17200)
  - Action Taken – Stipulation to Desist and Refrain Order (July 11, 2019)
- (2) Subject – I-Tea USA Inc. / I-Tea Bubble Tea & Smoothie Corp. (Hayward, California)
  - Violation & Charging Sections – Unlawful Franchise Investment Law Activity (Corporations Code Sections 31406 and 31408)
  - Actions Taken – Citation Including (1) Desist and Refrain Order; (2) Assessment of Administrative Penalty; and (3) Claim for Ancillary Relief (July 22, 2019)

### August 2019

- (1) Neighborhood Loans, Inc. (Lombard, Illinois)
  - Violation & Charging Sections – Unlawful California Financing Law Activity (Financial Code Sections 22712 and 22100)
  - Action Taken – Consent Order (August 1, 2019)
- (2) Populous Financial Group, Inc. dba Ace Cash Express (Irving, Texas)

- Violation & Charging Sections – Unlawful California Deferred Deposit Transaction Law Activity (Financial Code Sections 23050 and 23036(f))
- Action Taken – Consent Order (August 6, 2019)

### September 2019

- (1) Toyota Industries Commercial Finance, Inc. (Dallas, Texas)
  - Violation & Charging Sections – Unlawful California Financing Law Activity (Financial Code Sections 22712 and 22107)
  - Action Taken – Consent Order (September 9, 2019)
- (2) Mortgage Research Center, LLC dba VALoans.com / Veteran Loan Center/Veterans United Home Loans / Veterans United Home Loans of Hawaii / Veterans United Home Loans of San Diego / www.VAMortgageCenter.com (Columbia, Missouri)
  - Violation & Charging Sections – Unlawful California Residential Mortgage Lending and California Financing Law Activity (Financial Code Sections 50321, 50314 and 50513)
  - Action Taken – Consent Order (September 25, 2019)

## **Guidance**

On September 19, 2019, the Solar Consumer Protection Government Taskforce (made up in part by the DBO) [distributed](#) bulletins in the mail to 300,000 electric utility consumers in Fresno County, describing steps to take before installing a solar photovoltaic system in their homes.

On October 3, 2019, DBO issued [guidance](#) to state-chartered financial institutions to assist banks and credit unions that serve cannabis-related businesses in California. The guidance [intends](#) to help banks and credit unions to assess risk and comply with federal guidelines.

## **Consumer Alerts**

On May 10, 2019, DBO issued a [consumer alert](#) warning consumers of an entity named “StableWallet California Inc.” or “Stable Wallet Escrow” that is falsely purporting

to be a DBO-licensed escrow company and has produced a falsified Escrow License document.

On July 30, 2019, DBO issued a [consumer alert](#) warning consumers of a website (ace4loansllc.com), which is falsely claiming to be the DBO-licensed lender Ace 4 Loans LLC.

On September 17, 2019, DBO issued a [consumer alert](#) warning consumers of an unlicensed credit union, Liberty Star Credit Union, posting on Libertystarcu.com of six branches in the San Jose area.

On October 8, 2019, DBO issued a [consumer alert](#) warning consumers of a website (PrivateLendingDirectLLC.com) using the name, address, and phone number of a DBO-licensed entity, Private Lending Direct LLC, without the entity's permission.

## **LEGISLATION**

[AB 539 \(Limón\)](#), as amended September 4, 2019, titled the Fair Access to Credit Act, amends various sections of and adds sections 22304.5 and 22307.5 to the Financial Code to prohibit California Financing Law (CFL) licensees from receiving charges on a consumer loan at a rate exceeding 36% per annum plus the Federal Funds Rate for loans with a principal amount from \$2,500 to \$10,000. Here, the “bona fide principal amount” is defined as a loan amount excluding specific charges and fees and the “Federal Funds Rate” is the rate published in [H.15 Selected Interest Rates](#) by the Board of Governors of the Federal Reserve System. If the Federal Funds Rate is no longer published by the Federal Reserve System, the Commissioner of the DBO is mandated to establish a “substantially equivalent” rate.

Additionally, AB 539 requires a finance lender to offer a borrower a credit education program or seminar that has been reviewed and approved by DBO Commissioner before the finance lender can disburse loan proceeds to the borrower. A finance lender also has the option of offering a borrower a credit education program or seminar produced by an independent third party, but the third party credit education program or seminar must also be reviewed and approved by the Commissioner. To be eligible for Commissioner approval, the credit education program or seminar must incorporate the following topics relating to credit scores and credit reports:

(A) The value of establishing a credit score; (B) Ways to establish a credit score; (C) Ways to improve a credit score; (D) Factors that impact a credit score; (E) Ways to check one's credit score; (F) Ways to obtain a free copy of one's credit report; [and] (G) Ways to dispute an error in one's credit report.

Current CFL establishes an interest rate cap for financial loans of less than two thousand five hundred dollars (\$2,500). However, there currently exists no interest rate cap for financial loans of two thousand five hundred dollars (\$2,500) or more. The lack of an interest rate cap for financial loans above the \$2,500 threshold may leave some low- and middle-income borrowers susceptible to usury. According to the Assembly Floor Analysis of September 13, 2019,

CFL lenders that offer installment loans with principal amounts of \$10,000 or less often serve consumers who have limited credit options due to damaged credit history or minimal credit experience. Some of these consumers are not able to qualify for credit from banks and credit unions, so they turn to alternative financial service (AFS) providers (e.g., payday, title, and installment lenders) for their credit needs. Due to the higher credit risk of borrowers and less efficient business models of many AFS providers compared to banks and credit unions, the interest rates and finance charges for AFS products can be significantly higher than typical credit card rates, which are in the range of 10–30% APR.

Similarly, as reported in an August 8, 2019 [press release](#), the DBO found that payday lenders charged borrowers an average annual interest rate of 376 percent in 2018. Such trends in consumer lending demonstrate a tremendous need to protect vulnerable borrowers from unscrupulous lending practices.

In addition to setting a new interest rate cap to protect borrowers, AB 539 seeks to protect borrowers from excessive repayment terms and prepayment loan penalties. AB 539 amends section 22334 of the Financial Code to establish a maximum repayment term of 60 months and 15 days for loans of three thousand dollars (\$3000) but less than ten thousand dollars (\$10,000). AB 539 also adds section 22307.5 to the Financial Code, which prohibits financial lenders from charging, imposing, or receiving any prepayment loan penalties.

Governor Newsom signed AB 539 on October 10, 2019 (Chapter 708 Statutes of 2019)

[AB 857 \(Chiu\)](#), as amended September 6, 2019, amends section 1004 of the Financial Code and adds Division 5 (commencing with section 57600) to Title 5 of the Government Code relating to the authorization of public banks in California. Before the enactment of AB 857, counties in California were prohibited from loaning credit to any person or corporate entity in the state. Following AB 857's enactment, the term "bank" under the Financial Institutions Law and the Banking Law now incorporates public banks. Section 1004 of the Financial Code recognizes a public bank as "a corporation incorporated under Part 2 (commencing with section 5110) or Part 3 (commencing with section 7110) of Division 2 of Title 1 of the Corporations Code" with the approval of the DBO Commissioner. Under section 57607 of the Government Code, the DBO Commissioner may not issue more than two public bank licenses in a calendar year, and no more than ten

public banks may conduct business within the state consecutively. Within two years of issuing his or her tenth public bank license, the Commissioner is required to conduct a study on public banking.

Additionally, the Commissioner is prohibited from issuing additional public bank licenses after seven years after first issuing public banking rulemaking to implement this legislation. According to the author, “AB 857 provides more local control, transparency, and self-determination in how local taxpayer dollars are leveraged in the banking system by allowing local governments to charter their own public banks.” Additionally, proponents suggest that public banks have a fiduciary duty to protect taxpayer funds, unlike private banks.

Governor Newsom signed AB 857 on October 2, 2019 (Chapter 442, Statutes of 2019).

[SB 455 \(Bradford\)](#), as amended August 12, 2019, adds and repeals Division 10.5 (commencing with section 24000) of the Financial Code, relating to the provision of financing for underserved populations for the promotion of fiscal education. The bill requires DBO, until January 1, 2025, to provide grants up to \$100,000 to specified nonprofits to provide financial education to unbanked and underbanked populations in California, and authorizes DBO to award up to \$1,000,000 in grants per year. According to Senate analysis, this bill directs the DBO Commissioner to allocate funds in the newly established Financial Empowerment Fund (FEF), with a budget of \$4 million-plus DBO expenses, for the promotion of financial education services in unbanked and underbanked populations in California.

Governor Newsom signed SB 455 on October 2, 2019 (Chapter 478, Statutes of 2019).

[SB 496 \(Moorlach\)](#), amended June 19, 2019, amends sections 15633, 15633.5, 15640, and 15655.5 of and adds section 15630.2 to the Welfare and Institutions Code, relating to elder or dependent adult abuse. The bill requires information stemming from an incident of elder or dependent adult abuse to be given to specified investigators, including an investigator from DBO. According to the Senate analysis, broker-dealers are investment advisors are added to the list of parties mandated by law to report instances of suspected elder or dependent adult abuse.

Governor Newsom signed the bill on September 6, 2019 (Chapter 272, Statutes of 2019).

## LITIGATION

*People v. Silver Saddle Commercial Development, LP, et al.*, Case No. 37-2019-00049151-CU-MC-CTL (Super. Ct. San Diego). On October 1, 2019, a Superior Court Judge Wohlfeil [granted](#) DBO's request to shut down an alleged investment fraud that collected more than \$30 million from illegal land sales and other charges associated with the Silver Saddle Ranch & Club in California City, California. Under a [civil complaint](#) filed under seal, San Diego Superior Court Judge Wohlfeil granted DBO a restraining order barring Saddle Ranch from future land sales, froze Saddle Ranch's related assets, and appointed possession of Saddle Ranch and two affiliated entities to a receiver.

*In re Citi Mortgage, Inc.*, CRMLA License No. 413-1200 (Dep't Bus. Oversight). On June 13, 2019, CitiMortgage agreed to pay \$7.8 million in overdue interest



to more than 94,000 California homeowners under a [settlement](#) with the DBO. The payments will compensate homeowners for interest the state law requires to be paid on escrow impound accounts for residential mortgage loans.