

DEPARTMENT OF BUSINESS OVERSIGHT

Commissioner: Manuel P. Alvarez ♦ (866) 275-2677 ♦ www.dbo.ca.gov ♦ E-mail: ask.DBO@dbo.ca.gov

The Department of Business Oversight (DBO) serves as California’s primary regulator of financial service providers and products. As part of Governor Brown’s 2012 “Governor’s Reorganization Plan (GRP),” DBO 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 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.*).

DBO 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, the 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.

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.

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.

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. DBO has two primary regulatory responsibilities: protect consumers and protect the health of financial service markets.

HIGHLIGHTS

Department settles with TitleMax of California, Inc. on disciplinary charges

On December 16, 2019, DBO [announced](#) that it entered into a settlement agreement with TitleMax of California, a subsidiary of the nationwide financial lender TitleMax, which operates 65 California Financing Law (CFL) branch office licenses. DBO filed an [accusation](#) against TitleMax on December 7, 2018, accusing the corporation of multiple Financial Code violations, including making false, misleading or deceptive statements in violation of Financial Code section 22161; filing a false report with the [DBO] Commissioner in violation of Financial Code sections 22159 and 22170; overcharging interest rates in violation of Financial Code sections 22303 and 22304; overcharging administrative fees in violation of Financial Code sections 22305; and charging and receiving prohibited charges in violation of Financial Code section 22306.

According to its Accusation, DBO's investigation of TitleMax's disclosed loan files revealed that, with respect to loans of \$3,100 or less, 22 of the 165 loan files demonstrated that borrowers "made their first payment on the same day their loan funded or within 3 days of funding," which suggested to the Commissioner that TitleMax was illicitly lending borrowers amounts of less than \$2,500 and imposing unlawfully excessive fees on such loans. DBO also accused TitleMax of unlawfully including Department of Motor Vehicle (DMV) registration, lien, and handling fees in the calculation of loans of a bona fide principal amount of less than \$2,500, by which TitleMax "routinely overcharged interest rates and administrative fees on its loans" and, as stated in DBO's press release, "illegally required customers to pay the lender to cover DMV charges." In light of these accusations, DBO revoked TitleMax's finance lender licenses on December 7, 2018.

More than a year after revoking TitleMax’s finance lender licenses, DBO settled with the company and restored its licenses. In a [Settlement Agreement](#) dated December 16, 2019, DBO issued a Desist and Refrain Order prohibiting TitleMax from participating in any further Financial Code violations, imposed a \$25,000 penalty due to the Commissioner within five days of the effective date of the Settlement Agreement, and ordered the repayment of \$695,140.08 to 21,117 TitleMax customers who were reportedly victimized by the company’s violations. In entering the Settlement Agreement, TitleMax neither admitted nor denied DBO’s accusations, but agreed to settle to avoid “the necessity of a hearing.” So long as TitleMax remains in full compliance with DBO’s terms and conditions, TitleMax’s Financing Law licensure is to be reinstated on the condition that, “as of January 1, 2020, TitleMax will cease originating new loans in California and will engage only in servicing outstanding loans.”

California’s State of Emergency Jeopardizes Proposed Sweeping Changes at DBO Given Likely Budget Adjustments to Respond to COVID-19 Pandemic

On January 10, 2020, the Office of the Governor of California published its 2020–2021 [Governor’s Budget Summary](#), a comprehensive overview of Governor Newsom’s proposed statewide fiscal initiatives for the upcoming year. Among the most momentous undertakings discussed in the Budget Summary was the Governor’s proposal to expand DBO’s authority and capacity to protect consumers and foster the responsible development of new financial products. The Governor also proposed to rename DBO to the Department of Financial Protection and Innovation (DFPI) to better reflect its current and future role.

Specifically, the Governor proposed a new law, the California Consumer Financial Protection Law (CCFPL), outlined in the [Governor's proposed Budget Trailer Bill](#), which, according to [DBO's website](#), “seeks to cement California’s consumer protection leadership amidst a retreat on that front by federal agencies including the Consumer Financial Protection Bureau, which also remains subject to constitutional challenge.” The Governor’s budget proposed \$10.2 million and 44 positions in 2020–21, increasing to \$19.3 million annually and 90 positions in 2022–23 to support DFPI’s implementation of these changes and related activities.

A Legislative Analyst’s Office (LAO) [report](#) on the restructuring of DBO, dated February 26, 2020, provided a detailed analysis of the new law and newly proposed budget, but concluded that it “raises several key questions related to the (1) appropriate role for DFPI, (2) preferred approach to funding DFPI and its new proposed activities, (3) regulation of industrial banks, and (4) process that should be used for making policy choices. We also find that the specific choices the legislature makes could affect the amount and timing of the funding needed by the department.” Ultimately, the LAO recommended that the proposed statutory changes work through the legislative policy process, and not a budget trailer bill. “This would allow the changes to be vetted by the policy committees that have expertise on the specific issues that are raised.”

In light of the Governor’s [Proclamation of a State Emergency](#) on March 4, 2020, to prepare the state to address the COVID-19 pandemic, the Governor’s proposed budget will significantly change. On March 24, 2020, the California Department of Finance issued a [Budget Letter](#) to all state Agency Secretaries, Department Directors, Departmental Budget and Accounting Officers, and Department of Finance Budget and Accounting Staff, announcing that the state expects a severe drop in economic activity, with corresponding negative effects on anticipated revenues, as

a result of the virus. Accordingly, the Department of Finance will be reevaluating all budget changes, and these reevaluations will be reflected in the May Revision of the budget.

At this writing, it is unclear how the Governor’s initial proposal with respect to the DBO revamp will be impacted by these new developments.

Department Proposes New Regulations to Implement the California Money Transmission Act Regarding the Agent of Payee Exemption

On March 6, 2020, the Department published [notice](#) of its intent to adopt sections 80.126.10, 80.126.20, 80.126.30, 80.128, 80.128.10, and 80.130 of Title 10 of the CCR to establish rules that more clearly define the “agent of payee exemption” found under the state’s Money Transmission Act (MTA), which is set forth in the [proposed text](#). According to the [initial statement of reasons](#), the proposed regulations constitute an effort by DBO to clarify the scope of the agent of payee exemption to enhance confidence among members representing the money transmitter industry and to bolster governmental transparency and public participation in the rulemaking process. The initial statement of reasons further states that DBO’s proposed rulemaking is a response to the extensive confusion experienced by money transmitters in attempting to comply with the agent of payee exemption, which resulted in DBO receiving “numerous requests for interpretive opinions seeking guidance on how the exemption applies to business models where multiple entities facilitate the settlement of funds for payment.”

According to DBO’s notice, the legislature adopted the agent of payee exemption under the MTA with the enactment of [AB 2209 \(Dickinson\) \(Chapter 499, Statutes of 2014\)](#), creating an exception to money transmitter licensing requirements for “agents appointed by a payee to receive funds on behalf of the payee.” In order to obtain an exemption, an agent and a payee must enter

into a written agreement guaranteeing that a payor’s payment to the agent for goods or services is in accordance with the payor’s payment obligation to the payee. As defined in AB 2209, a payor is a “person owing payment to a payee for a good or a service,” while a payee is “a person who is owed payment from the payor for providing a good or a service.”

According to DBO’s proposed rulemaking text, the Department proposes amending the definition of “payor” to mean “the direct or indirect recipient of goods or services,” and amending the definition of “payee” to mean “the direct or indirect provider of goods or services, who is owed payment of money or other monetary value.” Furthermore, DBO’s initial statement of reasons states that the proposed regulation clarifies that “successive agents (can) facilitate the settlement of funds for payment,” and that the agent of payment exemption does not apply to stored-value transactions, which is “pre-funded monetary value that is available for later use.”

DBO has not scheduled a hearing at this writing but is accepting public comments on the proposed regulations until April 20, 2020.

MAJOR PUBLICATIONS

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

- [*The 2020–21 Budget: Reinventing the Department of Business Oversight*](#), Legislative Analyst’s Office, February 2020 (summary of Governor’s proposal to reinvent DBO, assessment, and recommendation) (see HIGHLIGHTS).
- [*Report to the California State Legislature and Department of Finance Regarding The Broker-Dealer/Investment Adviser \(BDIA\) Program*](#), Department of Business Oversight, January 2020 (DBO’s annual report on the BDIA program, which administers examinations to licensees pursuant to [SB 538 \(Hill\) \(Chapter 335, Statutes of 2013\)](#), detailing the up-to-date

numbers of licensed broker-dealer firms (2,674), broker-dealer agents (294,532), and broker-dealer branch offices (16,814); the number of BDIA program positions authorized and filled (79 of 89 authorized positions are filled); the number of examinations administered the BDIA program administered to broker-dealers (1,066); the number of investment adviser firms registered with DBO (3,729); and the BDIA program's need for six additional examiners.)

- [*2019 Leadership Accountability Report*](#), December 2019, (DBO's annual report to the Secretary of the California Business, Consumer Services and Housing Agency, detailing its (1) mission and strategic plan; (2) strategic plan goals and objectives; (3) integrity and ethical values; (4) ability to report ethical concerns; (5) oversight structure; (6) Workforce Action Plan; (7) monitoring protocols; and (8) risk assessment processes.)

- [*Commissioner's Report on the Offer or Sale of Securities by Permit under Corporations Code Section 25113 for 2018*](#), Department of Business Oversight, December 2019 (DBO's annual summary of securities qualified by permit pursuant to Corporations Code section 25113, which outlines (1) general categories of investments for which permits were approved (Church Extension Fund, Financing, Hard Money Lender, Church Debt, Mobile Home Parks, Country Clubs, Cooperatives, Mutual Water Companies, Agriculture, Technology, Retail, Real Estate Investment Trusts, Sports and Recreation); (2) experience and net worth requirements for issuers and sponsors; (3) the total money sought to be raised for each category of investments.)

- [*Revised Report of Activity Under Small-Dollar Loan Pilot Program*](#), Department of Business Oversight, December 2019 (DBO published a revision of its Annual Report of Activity Under the Pilot Program for Responsible Small Dollar Loans, which was originally published in 2018. The revised report discusses [AB 237 \(Gonzalez Fletcher\) \(Chapter 1016, Statutes of 2018\)](#), effective as of January 1, 2019, which: (1) increases the maximum loan amount under the Pilot

Program from \$2,499 to \$7,500; (2) requires DBO to examine each “finder” (unlicensed support entities) used by a Pilot Program licensee at least every two years; (3) authorizes DBO to charge fees upon Pilot Program licensees to offset the cost of finder examinations; (4) increases Pilot Program licensees’ reporting requirements relating to finders; (5) requires Pilot Program licensees to perform reasonable background checks on finders; and (6) requires Pilot Program licensees to reduce interest rates on loans made to borrowers that meet certain requirements.)

RULEMAKING

- **Implementation of [AB 1284 \(Dababneh\) \(Chapter 475, Statutes of 2017\)](#)** (On October 22, 2019, DBO [noticed](#) its intent to [amend](#) various sections in subchapter 6 of Title 10, chapter 3 of the CCR to establish a regulatory scheme for PACE program administrators in an effort to prevent and curtail unscrupulous business practices related to the financing of clean-energy home improvements. According to the [Initial Statement of Reasons](#), in addition to enhanced oversight of PACE administrator soliciting practices, advertisements, recordkeeping, documentation, complaint processing, education, etc., DBO seeks to transition licensure of PACE program administrators from traditional paper methods to the online Nationwide Mortgage Licensing System (NMLS)). The public comment period expired on December 9, 2019.) [[see 25:1 CRLR 283–286](#)]

- **Implementation of [AB 857 \(Chiu\) \(Chapter 442, Statutes of 2019\)](#)** (On March 4, 2020, DBO issued an [invitation for public comments](#) on proposed rulemaking to implement AB 857, a bill that allows local California agencies to apply for a public bank charter from DBO. Comment period expires May 19, 2020. Comments may be submitted via email to

regulations@dbo.ca.gov. Include “PRO 1/20” in the subject line with copy to Jennifer.Rumberger@dbo.ca.gov.)

- **Implementation of [SB 1235 \(Glazer\) \(Chapter 1011, Statutes of 2018\)](#)** (On January 17, 2020, DBO issued a [third invitation for public comments](#) on proposed rulemaking to add a new subchapter to Title 10, Chapter 3 of the CCR to implement SB 1235, which establishes a number of disclosures commercial financiers (“providers”) are required to present to recipients at the time of an offer of commercial financing. Public Comment Period expired January 31, 2020.)
[see [25:1 CRLR 281–283](#)]

LEGISLATION

- **[AB 2304 \(Chen\)](#)**, as introduced February 14, 2020, would amend section 374 of the Financial Code to reduce the maximum charge the Commissioner of DBO may charge to furnish a copy of a filed paper from 25 cents to 10 cents per page. *[A. B&F]*
- **[AB 2633 \(Ting\)](#)**, as introduced February 20, 2020, would amend sections 1083 and 1400 of, and add section 80003 to, the Financial Code to authorize banks to participate in a financial education programs at schools, and to require banks to annually report demographic and income information related to those financial education programs to DBO. According to the author, this bill is intended to help foster youth and children of undocumented parents to open bank accounts. *[A. B&F]*
- **[AB 2150 \(Calderon\)](#)**, as introduced February 10, 2020, would amend section 2003 of the Financial Code to add the “issuing, transferring, or storing of virtual currency on behalf of a consumer” within the definition of “money transmission” under the Money Transmission Act, thus necessitating a license from DBO to transmit virtual currency. *[A. B&F]*

- [AB 2561 \(Limón\)](#), as introduced February 19, 2020, would add sections 2177 and 23028 to the Financial Code to prohibit a licensee under the Money Transmission Act or the Deferred Deposit Transaction Law from arranging a loan or distributing or sharing marketing materials with a person related to a provider of a loan if such loan contains charges beyond those permitted by the California Financing Law. *[A. B&F]*
- [AB 2524 \(Wicks\)](#), as introduced February 19, 2020, would amend and repeal various sections of the Financial Code to, among other things, authorize the Commissioner of DBO, upon a reasonable opportunity to be heard, to suspend or revoke a license issued under the Check Sellers, Bill Payers, and Proraters Law for reasons including that the licensee has violated those laws. *[A. B&F]*

LITIGATION

- *In re Sezzle, Inc., CFL File No. 60DBO-104155.* On January 16, 2020, DBO entered into a [settlement](#) agreement with point-of-sale lender Sezzle, Inc., in which the company agreed to stop making illegal loans structured to avoid consumer protections, refund \$282,000 to California consumers, and pay a \$28,200 penalty in return for authorization by DBO to make future loans or extensions of credit to Californians under the California Financing Law.
- *In re Afterpay US, Inc., CFL File No. Unknown.* On March 16, 2020, DBO entered into a [settlement](#) agreement with point-of-sale lender Afterpay US, Inc., in which the company agreed to stop making illegal loans in a “buy now, pay later” scheme targeting vulnerable young consumers, refund \$905,000 to California consumers, and pay more than \$90,000 in administrative fees.