

# DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

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*Acting Commissioner: Christopher S. Shultz ♦ (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. [[26:1 CRLR 213–215](#)]

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 Pro-raters Law (Financial Code section 12000 et seq.); the Securities Depository Law (Financial Code section 30000 et seq.); the Capital Access Company Law (Corporations Code section 28000 et seq.); the California Consumer Financial Protection Law (Financial Code section 90000 et seq.) and Student Loan Servicing Act (Financial Code section 28100 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 2020, DFPI maintained oversight of 24 financial service industries and licensees, including 39 student loan servicers, 102 premium finance companies, 121 credit unions, 1,121 licensed locations for deferred deposit transactions, the registration of 2,618 broker-dealer firms, and the registration of 3,743 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 Consumer Financial Protection, which will supervise financial services not now regulated by the Department; (4) The Division of Corporations and Financial Institutions; (5) The Enforcement Division, which enforces the laws administered by DFPI; (6) Executive Office; (7) The Information Technology Office, which is responsible for technical support services; (8) The Legal Division, which includes all in-house legal counsel; (9) The Legislation Division, which monitors and tracks all bills related to DFPI and provides guidance on legislative issues; and (10) The Policy Division, which formulates institutional policy for DFPI.

The Executive Office is subdivided into the following programs: (1) The Equal Employment Opportunity Office; (2) Licensing & Information Reporting; (3) Internal Audits; (4) Strategic Planning; (5) The Office of Financial Technology Innovation, which researches new technology; and (6) The Office of the Ombuds, which reviews complaints about DFPI actions or staff.

The Division of Corporations and Financial Institutions is subdivided into the following programs: (1) The Banking Program, which licenses and regulates trust companies and commercial banks; (2) The Broker-Dealer/Investment Adviser Program, which licenses and regulates broker-dealers in the state; (3) The Credit Union Program, which licenses and regulates state-chartered credit unions; (4) The Financial Services Office, which is responsible for licensure of payday and finance lenders; (5) The Money Transmitter Program, which licenses and regulates money transmitters and issuers of money instruments such as money orders, travelers' checks, and value

cards; and (6) The Mortgage Lending Program, which is responsible for the licensure of residential mortgage lenders.

The Division of Corporations and Financial Institutions' regulatory 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), student loan servicers, domestic and foreign banks, industrial banks, credit unions, money transmitters (Western Union, PayPal, and others), premium finance companies, and trust companies and departments. DFPI has two primary regulatory responsibilities: protect consumers and protect the health of financial service markets.

On June 18, 2021, DFPI Commissioner, Manuel P. Alvarez, resigned his position, and Christopher Shultz became Acting Commissioner during the interim.

On August 9, 2021, Melinda Lee was promoted to Deputy Commissioner for the Debt Collector Licensing Division. Lee previously helped establish DFPI's student loan servicing program.

On September 1, 2021, Marchael Kelly was promoted to Deputy Commissioner for Supervision & Registration of New Covered Persons. This is a new position created with the duties of the California Consumer Financial Protection Law (CCFPL) in mind. DFPI designed the position to review new industries previously unregulated by DFPI.

On September 29, 2021, Governor Gavin Newsom [appointed](#) Clothilde Hewlett as DFPI Commissioner. Hewlett will begin working at DFPI after the 2021 Thanksgiving federal holiday break, pending her confirmation by the Senate, pursuant to California Government Code section

1774. Currently, she is the Executive Director and Chief Legal Officer for the Cal Alumni Association.

## HIGHLIGHTS

### **DFPI Commences Rulemaking Process and Seeks Input on Implementation of the Debt Collection Licensing Act**

On April 23, 2021, DFPI published [notice](#)<sup>1</sup> of its intent to add a series of new sections, commencing with section 1850, to subchapter 11.3, Title 10 of the CCR to enforce the Debt Collection Licensing Act (DCLA) as enacted by [SB 908 \(Wieckowski\) \(Chapter 163, Statutes of 2020\)](#), which becomes operative on January 1, 2022 (PRO 2/20). According to the [initial statement of reasons](#), the proposed rulemaking constitutes the Department’s “first rulemaking” proceeding related to the requirements for licensure under the DCLA and would adopt the license applications forms, requirements to obtain a license as a debt collector, and other requirements related to licensure.

The initial public comment period expired on June 8, 2021. After receiving public comment, the Department released [modified text](#) for public comment on June 23, 2021, and a [second modified text](#) on November 15. The public comment period on the second modified text expires on December 2, 2021.

On August 19, 2021, DFPI published an [invitation to comment](#) on its second rulemaking proceeding to implement the DCLA (PRO 5-21). In this second proceeding, as a precursor to the

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<sup>1</sup> DFPI appears to have submitted the notice to OAL on April 8, 2021 according to the notice posted on its website, but notice was not officially published in the California Notice Register until April 23. See [\[26:2 CRLR 262\]](#)

commencement of the formal rulemaking process, the Department sought public comment regarding three areas for potential rulemaking: the scope of the DCLA, the required annual reports, and the potential increase of bond amounts.

Specifically, with respect to the scope of the DCLA, DFPI asked commenters to identify any unclear definitions within Financial Code section 100002, seeking to reconcile some of these terms with the corresponding terms in the Rosenthal Fair Debt Collection Practices Act (Rosenthal Act) and the Fair Debt Buying Practices Act (FDBPA). The Department also inquired about whether further clarification was needed regarding the terms “engage in the business of debt collection,” “in the ordinary course of business,” and the word “regularly.” DFPI also suggested that the term “due or owing” may not be clear in reference to the definition of “debtor.” As a final part of DFPI’s push to explore the scope of the DCLA, it seeks to clarify its authority to enforce the Rosenthal Act and the FDBPA.

DFPI further asked if there should be additional information that the Department should require from licensees in their annual reports. DFPI is also considering rulemaking for higher bond amounts if required by the Financial Code, and how, if DFPI should require higher bond amounts, the amounts should relate to the number of affiliates under the license and the dollar amount of consumer debt collected by the licensee.

The public comment period on the proposed text expired on October 5, 2021, and a [compilation of the comments](#) received are posted on its website.

## **Department Orders Sanctions Under the Debt Collection Licensing Act**

On September 22, 2021, DFPI processed a [Desist and Refrain Order and Order Assessing Penalties](#) (Order) against the debt collector and debt buyer F&F Management (F&F). The Order

marks DFPI's [first enforcement](#) of [SB 187 \(Wieckowski\) \(Chapter 545, Statutes of 2019\)](#) (Rosenthal Fair Debt Collection Practices Act) through the [SB 908 \(Wieckowski\) \(Chapter 163, Statutes of 2020\)](#) (Debt Collection Licensing Act), which passed into law September 2020.

According to the Order, between approximately May 2021 through August 2021, F&F placed an automated voicemail message on multiple consumers' phone numbers, which failed to disclose F&F's name, contact information, or basic information about the debt, in violation of Civil Code section 1788.11(b). F&F also allegedly used randomized phone numbers to place the message. In addition, DFPI states that the automated message contained multiple false representations, including that it was the last and final notice; that it was a legal proceeding; and that if the consumer did not call back or respond within 24 hours, F&F would email and fax the issue to the consumer's current employer, file a lawsuit, and submit paperwork to the consumer's county sheriff's Department.

DFPI further alleges that F&F did not provide written notice, as required by law, to the consumers before contacting the credit reporting agency involved in the matter. F&F's acts are considered "debt parking," which occurs when debt collectors produce negative credit information regarding a consumer to a credit bureau before they attempt to communicate with the consumer about the alleged debt. DFPI alleges that F&F's actions and inactions unfairly damaged the consumers' credit and further violated state law.

DFPI also ordered F&F to pay a penalty of \$375,000.00 to the Commissioner within 30 days of the date of the Order.

## **Department of Financial Protection and Innovation Seeks Public Input on Draft Regulations Impacting Escrow Companies**

On November 4, 2021, DFPI [noticed](#) and held a [public hearing](#) for comments on modifications to the proposed rulemaking PRO 13/13, which would amend sections 1711.1 through 1741.7, Title 10 of the CCR. On January 1, 2021, DFPI initially published [notice](#) of its intent to add sections 1711.1 and 1741.7 to, and amend sections 1732.2, 1737.3, and 1741.5 of, Title 10 of the CCR relating to escrow law to clarify the meaning of “personal property” and “prohibited compensation”; clarify how to maintain books and preserve records; and clarify that the annual report must consist of audited financial statements and the results of an agreed-upon procedures engagement, an agreement between an escrow company and a certified public accountant on audit procedures. [See [26:2 CRLR 262–263](#)] This [proposed modified text](#) outlines changes to escrow regulations on personal property, prohibited compensation, escrow books and records, and the annual and closing audit reports due from these companies.

The public hearing included many comments specifically about section 1741.7 of PRO 13/13. The text includes changes to compensation that escrow companies receive and pass out in the course of business. Prohibited actions in the proposed rulemaking include, among other things, paying or offering to pay for business expenses, advertisements, food, beverages, and services unrelated to the escrow business. The proposed text prohibits actions related to offering free escrow services. The proposed rulemaking will substantially regulate how escrow companies reduce rates when they engage in business, which will prohibit escrow companies from offering discounts without mutually agreed upon discounts for all parties involved. The companies must explicitly write these discounts, and these discounts cannot contravene the fees associated with



escrow costs and cannot be made so that one party is covering the escrow costs of another party unless this allocation of escrow fees was otherwise made between the parties. These changes will also prohibit escrow companies from offering discounts to individual clients of a specific broker without that discount being available to clients of all brokers.

These changes will impact how escrow companies do business, and many comments at the public hearing explicitly called these changes “kickback” regulations, noting that this would do more harm to the good-faith actors in the escrow business than regulate the bad actors. Some public commentators noted that the current law, section 17420 of the California Financial Code, covers the situations that this proposed rulemaking is trying to regulate and additional regulations are unnecessary and outside of the powers of the Commissioner.

As of this writing, DFPI has not taken further action on PRO 13/13 in response to the comments made at this public hearing.

## **Annual DFPI Report Shows Significant Decline of Payday Loans Amid COVID-19 Pandemic**

On July 22, 2021, DFPI released its [Annual Report of Payday Lending Activity Under the California Deferred Deposit Transaction Law](#) to the public. This report is required through the California Deferred Deposit Transaction Law, found in section 23026 of the Financial Code. The trend of the annual report revealed an overall decrease in payday lending amidst a global pandemic.

Payday loan transactions occur when a consumer provides a lender with a personal check for \$300 or less. Upon receiving this check, the lender gives the consumer the money minus an agreed-upon fee that, by law, cannot exceed 15% of the personal check amount. The lender then defers depositing the consumer’s check for a specific period not exceeding 31 days.

The data reporting period for this report ended December 31, 2020, with 144 of the 150 payday lender licensees reporting data from the calendar year in time to be included in the annual report. In the 2020 calendar year, fewer than 6.1 million payday loans were obtained, representing a 40% decline in loans and a 30% decline in customers since the 2019 calendar year. The dollar volume of payday loans in 2020 showed a decrease of 40%, a much more substantial decrease than the pattern of the past decade suggested. The loss of nearly half of payday loan dollar volume is believed to be due to the pandemic for many reasons, including factors such as stimulus checks, loan forbearances, and growth in alternative financing options.

In addition to the decrease in payday loans, the report indicates an increased dependence on electronic transactions and noncash financial products. Online payday loans accounted for one-third of all payday loans (2,066,113 loans), which represents 41% of customers. Cash disbursements decreased from 75.2% in 2019 to 64% in 2020, with 16% of licensees making payday loans over the internet.

The report also indicates a need for the DFPI's regulation of the payday loan industry, as this industry is typically utilized by financially vulnerable Californians. A majority of licensees (61.8%) reported serving customers who received government assistance, while 49% of customers had an average income of or below \$30,000 and 30% of customers had an average income of or below \$20,000. In a [press release](#) addressing the annual report, acting Commissioner Christopher S. Shultz stated, “[w]e continue to closely monitor all financial products marketed to those in desperate financial need.” This statement is backed up by the data collected in this annual report; for instance, payday lenders collected roughly \$250.8 million in fees on payday loans in 2020, a majority of which (66%) came from customers who made seven or more payday transactions during the year.

During the time period this data was collected, DFPI did not have jurisdiction over debt collection. CCFPL was enacted on September 25, 2020, and conferred new authority to DFPI, allowing the Department to supervise and regulate “consumer financial products and services.” DFPI’s new authority over the debt collection industry is entwined with the payday loan industry; as represented in the annual report, 99% of payday loan licensees reported owning an outside collection agency.

## **OAL Approves DFPI’s Regulatory Package Related to Use of the Nationwide Multistate Licensing System & Registry (NMLS) and PACE Program Administrators**

On August 5, 2021, the Office of Administrative Law (OAL) [approved](#) regulatory action PRO 02/17 from DPFI, which amends 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. On July 7, 2021, DFPI issued its fifth [notice](#) of modifications and modified [text](#). The 15-day public comment closed on July 22, 2021. In DFPI’s [final statement of reasons](#), the Department responds to the single public comment received and notes that the amendments make various grammatical changes and changes to cited references and authority listed in the regulation.

This rulemaking action facilitates the Nationwide Multistate Licensing System & Registry (NMLS) transition for California Financing Law applicants and licensees and adopts requirements for PACE Program Administrators. [\[26:2 CRLR 261\]](#) This rulemaking action implements [AB 1284 \(Dababneh\) \(Chapter 475, Statutes of 2017\)](#), which requires a program administrator that administers the PACE program on behalf of a public agency to be licensed by the Commissioner under the California Financing Law. Through these regulatory proposals, DFPI intends to

strengthen consumer protections, prevent consumer default, and curtail the fraudulent activity of deceitful PACE businesses.

According to the [initial statement of reasons](#), these regulations are intended to “enhance consumer protections and government oversight in the PACE market.” This rulemaking action is extensive, as the [text of the final rule](#) amends and adopts over 40 code sections. The amended code sections of Title 10 are as follows: 1404, 1408, 1409, 1409.1, 1411, 1422, 1422.4, 1422.4.5, 1422.5, 1422.5.1, 1422.6.2, 1422.9, 1422.10, 1422.12, 1423, 1424, 1425, 1426, 1437, 1550, and 1552. The amended sections primarily deal with the changes to licensing procedures regarding the NMLS. The code sections adopted include: 1620.01, 1620.02, 1620.3, 1620.05, 1620.6, 1620.07, 1620.08, 1620.10, 1620.11, 1620.12, 1620.13, 1620.14, 1620.15, 1620.16, 1620.17, 1620.19, 1620.21, 1620.22, 1620.25, 1620.27, 1620.28, and 1620.29. These adopted sections set requirements for PACE Program administrators.

According to the initial statement of reasons, the NMLS is an online licensing system developed and operated by State Regulatory Registry LLC. Prior to October 1, 2021, DFPI required mortgage lenders, mortgage servicers, mortgage brokers, mortgage loan originators, program administrators, and student loan servicers to apply for California Financing Law (CFL) licenses through the NMLS. Those licenses not administered through NMLS were done through the DFPI and resulted in paper filings. Through this rulemaking action and pursuant to section 1422.4(b)(2), DFPI now requires that all finance lenders and brokers applying for licensure on or after October 1, 2021, and all applications, reports, notices, related filings, renewals, authorizations, and fees required to be filed with the Commissioner, must be filed electronically with and transmitted to NMLS, except as otherwise indicated in the subchapter. This modernizes the licensing process by increasing electronic filings, streamlining the licensing process, and

reducing paper waste. The roughly 40-page application for licensure has also been updated—section 1422 details who is now required to obtain a license under the CFL through the NMLS.

In regard to the rulemaking effect on PACE programs, the initial statement of reasons indicated that “[t]his rulemaking action amends and enacts rules to implement AB 1284 and addresses the practices in the marketplace that were the impetus for the bill.” AB 1284 requires the program administrators to comply with the licensure requirements that a finance lender or broker must adhere to under the CFL. Program administrators are the private equity entity that administers a PACE program on behalf of a public agency to be licensed by the Commissioner of DFPI. These requirements include the obligations of a program administrator (section 1620.03); the prohibition of false or misleading statements and unfair business practices (section 1620.10); and the submission of an annual report (section 1620.19). The annual report must be submitted by March 15, 2022, and the reported data must include the “number of tax sales or foreclosures that were reported to the program administrator during the prior calendar year on property subject to a PACE assessment initiated by the public agency, a program administrator, or any other person,” as well as a detailed report on PACE assessments that are over 12 months delinquent on payments.

These regulatory changes went into effect October 1, 2021

## **OAL Approves Department of Financial Protection and Innovation’s Public Banking Regulations to Become Effective January 1, 2022**

On September 14, 2021, OAL [approved](#) regulatory action PRO 1/20 from DFPI, which amends and adopts various sections in Subchapter 1 in Title 10, Chapter 10 of the California Code of Regulations (CCR) to implement and administer legislation authorizing public banks, a first for the State of California. On March 5, 2021, DFPI published its [notice](#) of modifications and modified

[text](#). The 15-day public comment period concluded on March 26, 2021. In DFPI's [final statement of reasons](#), the Department responded to four comment letters received during the initial notice period from December 4, 2021, through January 21, 2021, and three comment letters received during the 15-day comment period.

This rulemaking action implements [AB 857 \(Chiu\) \(Chapter 442, Statutes of 2019\)](#), which establishes the process for a local agency to apply for a bank charter. The bill requires local agencies to conduct and approve a study of viability of a public bank and authorizes local agencies to deposit funds into and invest in a public bank, subject to specific requirements. The bill also prohibits a public bank from competing with local financial institutions.

DFPI's rulemaking action further defines terms used in the public banking process and clarifies the process itself. Under this rulemaking action, public banks may offer local agency banking, infrastructure lending, participation lending, and wholesale lending. DFPI intends for this rulemaking action to allow local agencies to achieve greater return rates on their investment through involvement with public banks which would, in turn, improve infrastructure. The text of the final rule adopts and amends 13 code sections. The adopted code sections of Title 10 are as follows: 10.131.7, 10.135.1, 10.140.1, 10.140.6, 10.141.1, 10.116.1, 10.3301.1. The amended code sections are as follows: 10.112, 10.141, 10.151, 10.3000, 10.3100, and 10.3402.

In the final statement of reasons, the Department provided additional clarification on pertinent provisions of the modified text and continued to stress the necessity for each of the proposed rules within the initial statement of reasons. Section 10.131.7 expands the factors upon which the Commissioner of the DFPI will determine whether a financial product or service is offered by a local financial institution within the jurisdiction of a public bank. The Department intends for this to allow public banks to demonstrate that the product they want to offer is

substantially different from the product offered by a local financial institution within the public bank jurisdiction. Section 10.140.6 clarifies that local financial institutions must have a physical presence within the jurisdiction of a public bank, which does not include ancillary facilities such as automated teller machine(s), loan production offices, or offices that perform administrative, corporate, or back-office functions.

As stated in the final statement of reasons, DFPI uses this regulatory action to “strike a balance between supporting the benefits which may be realized by Californians and protecting against a public bank’s failure by ensuring that public bank applicants demonstrate the financial ability, stability and experience to ensure a likelihood of success.” The regulatory changes go into effect on January 1, 2022.

## MAJOR PUBLICATIONS

- The following reports have been conducted by or about the DFPI during this reporting period:
- [\*Inaugural Survey of Diversity in State Banking\*](#), Department of Financial Protection and Innovation, April 2021 (First department-sponsored diversity survey issued October 2020; reports 80 banks and credit unions responded to the survey out of the 233 state-chartered banks and credit unions, reflecting a 34% participation rate; approximately half of responding financial institutions mandate diversity education and training for employees, only 23% of respondents require diversity education for board members; 40% have board-approved diversity, equity, and inclusion goals with purposeful recruiting being the most common; 75% of respondents would like DFPI to support diversity, equity, and inclusion efforts through providing

education and training to licensees; self-assessment was the most popular form of data collection among participating institutions.).

- [\*Annual Report of Payday Lending Activity Under the California Deferred Deposit Transaction Law\*](#), Department of Financial Protection and Innovation, July 2021 (Pursuant to California Deferred Deposit Transaction Law, section 23026 of the Financial Code, 2020 Annual Report on payday loan activity reports an overall decrease in payday lending amidst a global pandemic; reports a 40% decline in loans and a 30% decline in customers from the 2019 calendar year to the 2020 calendar year; dollar volume of loans showed a 40% decline, a substantial decrease from the pattern suggested from the past decade; cash disbursement decreased from 75.2% to 64% from 2019 to 2020; 16% of licensees making payday loans over the internet; at the time of data collection, DFPI did not have jurisdiction over debt collection (see HIGHLIGHTS)).

- [\*Annual Report of Nonprofits Providing Zero-Interest Consumer Loans\*](#), Department of Financial Protection and Innovation, July 2021 (Pursuant to section 22067 of the Financial Code, 2020 Annual Report on nonprofit organizations that facilitate zero-interest, low-cost loans, including statistics on lender activity and participation; reports 14% decrease in borrowers applying for loans under the program; 45.45% decrease in borrowers obtaining multiple loans; 7% of borrowers obtaining more than one loan saw an average credit score increase of 9 points; DFPI received no complaints regarding the program and no examinations were performed).

- [\*Annual Report of Activity Under Small Dollar Loan Pilot Program\*](#), Department of Financial Protection and Innovation, July 2021 (Pursuant to Financial Code section 22380, 2020 Annual report on utilization of the Pilot Program for Increased Access to Responsible Small Dollar Loans; data represents limited data collection and does not represent entire Pilot Program activity, therefore omits comparison to prior year activity; reports Pilot Program lenders approved 94,778



loans; annual total principal amount of loans was \$94 million; 242,098 borrowers applied for loans; top two reasons for borrowing was purchasing of goods or services other than a vehicle and bill payment, as reported by 52% of borrowers; 54% of loans ranged from \$500 to \$999; 74% of loans terms were for 360 days or more; 65% of borrowers had an income between \$20,000 to \$44,999; the purpose of regulatory examinations that collected the data was to obtain information about whether lenders and finders participating in Pilot Program have complied with the program's regulations; increased violations in 2020 were attributed to the increased number of finders examined).

## RULEMAKING

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

- **PRO 02/20 – Debt Collection Regulation of License Application and Requirements:** On April 23, 2021, DFPI published [notice](#) of its intent to add a series of new sections, commencing with section 1850, to subchapter 11.3, Title 10 of the CCR to enforce the Debt Collection Licensing Act as enacted by [SB 908 \(Wieckowski\) \(Chapter 163, Statutes of 2020\)](#), which becomes operative on January 1, 2022. The initial public comment period expired on June 8, 2021. After receiving public comment, the Department released [modified text](#) for comment on June 23, 2021, and a [second modified text](#) on November 15. The public comment period on the second modified text expires on December 2, 2021 (see HIGHLIGHTS).

- **PRO 05/21 – Debt Collection Regulation of Scope, Annual Reports, and Bond:** On August 19, 2021, DFPI published an [invitation](#) to comment about questions regarding the scope of the DCLA, annual reports, and higher bond amounts for licensees. The comment period ended

on October 5, 2021. DFPI received [comments](#) from 22 organizations. At this writing, DFPI has not yet formally noticed additional proposed regulations (see HIGHLIGHTS).

- **PRO 07/17 – Money Transmission Act, Agent of Payee Exemption:** On June 7, 2021, OAL [approved](#) DFPI’s proposed [amendments](#) to sections 80.126.10, 80.126.20, 80.126.30, 80.128, 80.128.10, and 80.128.30, Title 10 of the CCR to clarify the scope of the payee exemption under the Money Transmission Act. DFPI originally published notice of its intent to amend the aforementioned sections on February 19, 2020. [[25:2 CRLR 189–190](#)] There were two rounds of rulemaking, the comment period on the second round ended May 3, 2021. [[26:2 CRLR 263](#)] The amended regulation became effective October 1, 2021.

- **PRO 09/17 – California Credit Union Law, Notice of Second Modifications:** On April 23, 2021, DFPI published [notice](#) of the second modification of rulemaking under the California Credit Union Law. The proposed [amendment](#) shows DFPI’s plan to modify section 30.300 of Title 10 of the California Code of Regulations. The proposed changes clarify permitted investment rules for investing in investment companies, trusts, deposits of authorized financial institutions, and funds sold to authorized financial institutions. The comment period for this proposed modified text ended May 10, 2021, with [comments](#) from interested parties. At this writing, no further action has been taken.

- **PRO 13/13 – Escrow Regulation: Recordkeeping Updates & Annual Audit Report:** On March 1, 2021, DFPI held a public [hearing](#) regarding proposed updates to Title 10 of the CCR regarding escrow. From that public hearing on August 27, 2021, DFPI published a [notice](#) of intent to modify PRO 13/13. The [proposed modified text](#) revealed the planned updates, which included regulation on personal property, prohibited compensation, escrow books and records, and the mandatory annual and closing audit reports. The comment period for this proposed modified

text ended on September 13, 2021. Seven organizations left public [comments](#) regarding this new round of updates. In regards to these comments, another Notice of Public Hearing was [published](#), scheduling a public hearing for November 4, 2021. The Department held its public hearing on November 4, 2021 (see HIGHLIGHTS).

- **Surety Bond-Receiving Money for Transmission:** On August 30, 2021, OAL [approved](#) the Department of Justice's (DOJ) request to amend section 31.25, Title 10 of the CCR. This created a surety bond licensees specifically when they engage with DFPI as licensees in money transmission as described in California Financial Code (CFC) section 2000 et seq., known as the Money Transmission Act. CFC section 2037 demands licensee deposit security to the Treasurer. For licensees, this Surety Bond fulfills this requirement.

- **Surety Bond-Payment Instrument or Stored Value:** On August 30, 2021, OAL [approved](#) DOJ's request to amend section 31.25, Title 10 of the CCR. This creates a surety bond of licensees specifically when they engage with DFPI as licensees in selling or issuing payment instruments, or stored value as described in CFC section 2000 et seq. is known as the Money Transmission Act. CFC section 2037 demands licensee deposit security to the Treasurer. For licensees, this Surety Bond fulfills this requirement.

- **PRO 02/17 – Nationwide Multistate Licensing System & Registry (NMLS) and Property Assessed Clean Energy (PACE) Program Administrators:** On August 5, 2021, OAL [approved](#) regulatory action PRO 02/17 from DFPI, which amends 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 and facilitate the Nationwide Multistate Licensing System & Registry (NMLS) transition for California Financing Law applicants and licensees (see

HIGHLIGHTS). [[26:2 CRLR 261](#)]

- **PRO 01/18 – Commercial Financing Disclosures:** On August 9, 2021, DFPI issued [notice](#) of the second modifications to proposed regulations and revised the original text of its proposed regulations under Division 9.5 of the Financial Code 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 established numerous disclosures commercial financiers (“providers”) are required to present to recipients at the time of an offer of commercial financing. The comment period ended August 24, 2021, with seventeen [comments](#) received. On October 12, 2021, DFPI issued [notice](#) of the third modification to the proposed regulations. The comment period ended October 27, 2021, with eighteen [comments](#) received. On November 5, 2021, DFPI issued [notice](#) of the fourth modification to the proposed regulations with minor changes to the text. The Department originally published [notice](#) of rulemaking action on September 11, 2020, and held a [public hearing](#) on November 9, 2020. [[26:1 CRLR 221–222](#)] The public comment period on the fourth modified text ends on November 22, 2021.

- **PRO 02/21 – CCFPL Small Business Protections:** On August 18, 2021, DFPI issued an [invitation](#) to comment on the proposed adoption of sections 90009.1 and section 90009.2 of the CCFPL to implement [AB 1864 \(Limón\) \(Chapter 157, Statutes of 2020\)](#). The [proposed regulatory adoption](#) concerns the commercial financing of small businesses, nonprofits, and family farms. DFPI sought comments from interested parties on draft language as well as the potential economic impact on businesses affected by the draft language. In regard to the potential economic impact, DFPI sought information on the potential impact to the competitiveness of the California market, the draft language’s potential impact on the creation and elimination of job opportunities and businesses, as well as initial and ongoing costs to businesses required to comply with the draft

language and the state. The comment period came to an end on September 17, 2021. Twelve [comments](#) were received. Several of the comments concern the potential overreach of DFPI authority with this rulemaking, while others concern technical questions. At this writing, DFPI has yet to notice rulemaking on this topic formally.

- **PRO 03/21 – Consumer Complaints:** On August 18, 2021, DFPI issued an [invitation](#) to comment on the [proposed adoption](#) of sections 90008.1, 90008.2, 90008.3, 90008.4, 90008.5, and 90008.6 of the CCFPL to implement [AB 1864 \(Limón\) \(Chapter 157, Statutes of 2020\)](#) regarding consumer complaints. The proposed rulemaking only covers the procedures for a covered person or service provider to respond to consumer complaints and inquiries and definitions relating to the process. It does not cover DFPI’s handling of complaints and inquiries. The comment period ended on September 17, 2021. Sixteen organizations submitted [comments](#). As of this writing, the Department has yet to notice rulemaking on this topic formally.

- **PRO 04/21 – Pilot Program for Increased Access to Responsible Small Dollar Loans:** On August 6, 2021, DFPI published [notice](#) of its intent to amend sections 1602, 1603, 1606, 1613, 1614, 1615, 1616, Title 10 of the CCR to implement revisions to the Pilot Program for Increased Access to Responsible Small Dollar Loans (pilot program) as set forth in the [proposed text](#). According to the [initial statement of reasons](#), the proposed amendments would implement [SB 235 \(Block\) \(Chapter 505, Statutes of 2015\)](#) and [AB 237 \(Gonzalez Fletcher\) \(Chapter 1016, Statutes of 2018\)](#) to encourage more lenders to participate in the pilot program. Through increased lender participation and increased availability of affordable consumer credit, DFPI intends for this rulemaking to generally benefit California’s economy and help consumers build or rebuild their credit history while increasing government transparency. On October 6, 2021, DFPI issued a [notice of modification](#) to proposed regulations. The [proposed change](#) adds Financial

Code section 22370 to the reference citations for section 1603. The comment period of this change concluded on October 21, 2021, with [one comment received](#). As of this writing, no further action has taken place.

- **PRO 01/20 – Nationwide Multistate Licensing System & Registry (NMLS) and Property Assessed Clean Energy (PACE) Program Administrators:** On September 14, 2021, the OAL [approved](#) DFPI’s regulatory action PRO 1/20, which amends and adopts various sections in Subchapter 1 in Title 10, Chapter 10 of the CCR to implement and administer legislation authorizing public banks, a first for the State of California. The initial notice was issued December 4, 2020. [[26:2 CRLR 260](#)] This rulemaking action implements [AB 857 \(Chiu\) \(Chapter 442, Statutes of 2019\)](#), which establishes the process for a local agency to apply for a bank charter (see HIGHLIGHTS).

## LEGISLATION

- [AB 424 \(Stone\)](#), as amended on August 26, 2021, amends section 1788.200 of the Civil Code to modify the law in regard to collection practices by private collectors of private student loans. Collectors of private student loans are required to provide specific information about the loan to the borrower when they initiate collections. They are also required to file in court or write any settlements reached between borrower and collector. The bill provides instructions on suits brought by collectors against debtors. It also provides instruction on suits brought against collectors of private student loan debt. This bill will go into effect on July 1, 2022. On October 6, 2021, Governor Newsom signed AB 424 (Chapter 559, Statutes of 2021).

- [AB 430 \(Grayson\)](#), as amended on June 24, 2021, amends sections 1788.18, 1788.61, 1798.92, and 1798.93 of the Civil Code, and section 530.8 of the Penal Code to prohibit

debt collectors from conducting collection activities if they receive a report from the Federal Trade Commission (FTC) about potential identity theft. Previous law only allowed for a pause on collection activities pending review if the collector was presented with a police report filed by the debtor. On September 23, 2021, Governor Newsom signed AB 430 (Chapter 265, Statutes of 2021).

- [AB 663 \(Chen\)](#), as amended on September 3, 2021, amends various sections of the Corporations Code to provide additional flexibility to corporations during an emergency, including electronic communications and permitting annual shareholder meetings and other meetings remotely if certain conditions are met. On October 5, 2021, Governor Newsom signed AB 663 (Chapter 523, Statutes of 2021).

- [AB 1020 \(Friedman\)](#), as amended on August 26, 2021, amends sections 1788.14, 1788.52, and 1788.58 of the Civil Code, adds section 1788.185 to the Civil Code, amends Sections 127400, 127401, 127405, 127410, 127420, 127425, 127435, 127440, and 127444 of the Health and Safety Code, and adds section 127436 to the Health and Safety Code. Hospitals will be prohibited from selling patient debt to a “debt buyer” unless specific conditions are met. The debt collector must be licensed by the DFPI as one condition. This bill will go into effect on January 1, 2022. On October 4, 2021, Governor Newsom signed AB 1020 (Chapter 473, Statutes of 2021).

- [AB 1320 \(Bauer-Kahan\)](#), as amended on August 26, 2021, amends section 2103 of the Financial Code and adds section 2107 to the Financial Code to require a licensed money transmitter to display on its website a toll-free telephone number for customer service. That customer service line must be operative a minimum of 10 hours a day, Monday through Friday. The bill also requires a receipt for E-commerce transactions. This bill will go into effect on July 1, 2022. On October 4, 2021, Governor Newsom signed AB 1320 (Chapter 453, Statutes of 2021).

- [AB 1466 \(McCarty\)](#), as amended September 3, 2021, amends sections 12956.1, 12956.2, 27282, and 27388.1, and adds sections 12956.3 and 27388.2 to the Government Code. This bill will require an escrow company, real estate broker, or real estate agent to provide a restrictive covenant modification form to a person who holds an ownership interest of record in the property. Further, if escrow companies, real estate brokers, or real estate agents have actual knowledge that the documentation they deliver includes unlawful or restrictive covenants, they must notify that person. They will also be required to notify that person of their ability to have it removed through the restrictive covenant modification process. The bill will go into effect beginning July 1, 2022. On September 28, 2021, Governor Newsom signed AB 1466 (Chapter 359, Statutes of 2021).

- [SB 239 \(Committee on Banking and Financial Institutions\)](#), as amended August 19, 2021, amends sections 16430, 16522, and 16612 of the Government Code to reduce the value of a security that credit unions are required to have in order to receive some state funds from 110% of the value deposited to just 100% of the value. On October 7, 2021, Governor Newsom signed SB 239 (Chapter 635, Statutes of 2021).

- [SB 269 \(Portantino\)](#), as amended on June 7, 2021, amends sections 14250, 14409, 14410, 14456, 14556, 14807, 14811, 14851, and 15050 of the Financial Code and repeals section 14655 of the Financial Code to amend credit union law. This bill establishes that a member of the audit committee cannot receive compensation for services as a member of that committee. A member of the credit union board of directors can be expelled for abusive, threatening, or harassing behavior toward credit union staff, volunteers, or members or for abuse of credit union systems. Their expulsion can be immediate if it is reasonably necessary for the protection of the credit union or its staff, volunteers, or members. The bill defines what a membership committee's duties would



entail. The bill defines regulations for establishing and running an audit committee. The bill authorizes a credit union to consider an inactive member as withdrawn from membership. On October 9, 2021, Governor Newsom signed SB 269 (Chapter 762, Statutes of 2021).

- [SB 360 \(Wilk\)](#), as introduced on February 10, 2021, amends section 1785.28.6 of the Civil Code. This bill extends the operation of section 1785.1 et seq. of the Civil Code, known as the Consumer Credit Reporting Agencies Act (CCCRAA), from January 1, 2022, to January 1, 2027. This act requires escrow agent rating services and escrow agents to continue to comply with the California Consumer Credit Reporting Agencies Act. On July 16, 2021, Governor Newsom signed SB 360 (Chapter 105, Statutes of 2021).

- [AB 283 \(Chen\)](#), as introduced on January 21, 2021, amends section 25100 of the Corporations Code to expand the 1968 Corporate Securities Law exemption of equity-related securities or credits issued by a cooperative corporation (or co-op) as patronage distributions from securities qualification requirements. The bill expands the exemption to apply to any credits to a member's capital issued to a shareholder or member by any corporation organized pursuant to that law if the aggregate investment in that corporation of that shareholder or member in shares, memberships, or credits to that member's capital sold does not exceed \$1,000. The bill specifies that this \$1,000 limitation does not apply to any shares, memberships, or credits allocated to a member's capital as all, or part of, any patronage distributions. According to the author, AB 283 is intended to alleviate some of the burden placed on co-ops that must currently report disbursements made to co-op members. Governor Newsom signed AB 283 on October 5, 2021 (Chapter 512, Statutes of 2021).

- [AB 511 \(Muratsuchi\)](#), as amended on June 24, 2021, amends sections 25102, 25501, 25503, 25608 of the Corporations Code to exempt crowdfunded equity offerings from state

securities qualifications requirements under certain conditions and requires a court to award reasonable attorney's fees and costs to a prevailing purchaser or seller for specified violations of state securities law. According to the author, this bill offers both entrepreneurs and investors a means of filling the "capital gap" that exists for smaller early-stage seed capital offerings while helping to jumpstart companies so that they can become candidates for larger rounds of financing. Governor Newsom signed AB 511 on October 7, 2021 (Chapter 617, Statutes of 2021).

- [AB 790 \(Quirk-Silva\)](#), as amended April 26, 2021, amends section 1770 of the Civil Code to curb PACE program fraud under the Consumer Legal Remedies Act (CLRA). The bill amends the CLRA's home solicitation provision to ensure that it applies to PACE assessments that are part of a pattern or practice in violation of applicable PACE regulations. According to the author, PACE programs are commonly marketed to older homeowners and seniors are most vulnerable to door-to-door scams; by applying the CLRA home solicitation prohibition to PACE assessments, seniors will be better protected against fraud. Governor Newsom signed AB 790 on October 6, 2021 (Chapter 589, Statutes of 2021).

- [AB 1177 \(Santiago\)](#), as amended on September 3, 2021, adds and repeals Title 21.1 of the Government Code, commencing with section 100100. Known as the California Public Banking Option Act, AB 1177 requires the Treasurer to convene, on or before September 9, 2022, the CalAccount Blue Ribbon Commission to conduct a market analysis on the feasibility of the "CalAccount Program" on or before July 1, 2024. The CalAccount Program would offer Californians access to a voluntary, zero-fee, zero-penalty federally insured transaction account (CalAccount) and related payment services at no cost to account holders in order to facilitate the automation of basic financial transactions designed to serve the needs of individuals with low or fluctuating income. According to the author, the bill's purpose is to protect consumers who lack

access to traditional banking services from predatory, discriminatory, and costly alternatives. Governor Newsom signed AB 1177 on October 4, 2021 (Chapter 451, Statutes of 2021).

- [AB 1405 \(Wicks\)](#), as amended August 16, 2021, adds Title 1.6C.17 (commencing with section 1788.300) to the Civil Code to enact the Fair Debt Settlement Practices Act. The bill prohibits unfair, abusive, or deceptive practices in connection with debt settlement providers and payment processor activities. AB 1405 authorizes a consumer to terminate a contract for debt settlement services at any time without any sort of fee or penalty by electronic or oral notice to the debt settlement provider. The bill also authorizes consumers to bring a civil action for violation of these provisions and specifies the application of its provisions. AB 1405 was signed by Governor Newsom on October 4, 2021 (Chapter 454, Statutes of 2021).

- [SB 531 \(Wieckowski\)](#), as amended July 8, 2021, adds section 1788.14.5 to the Civil Code to impose obligations on debt collectors assigned to delinquent debt to contact the debtor. The debt collector must provide information on or proof of the debt within 30 days of receiving a written request from the debtor. Upon first written communication with the debtor, debt collectors must include specified notice and provide the debtor with an active postal address for where to send the written request for information or proof of debt. SB 531 becomes operative July 1, 2022. SB 531 was signed by Governor Newsom on October 4, 2021 (Chapter 455, Statutes of 2021).

- [SB 757 \(Limón\)](#), as amended June 22, 2021, amends sections 7151, 7152, 7156, 7159.5, 7162, and 7170 of the Business and Professions Code to place solar energy system installation within the definition of home improvement contracts. Consumers are not provided with the same protections the other home improvement contract consumers have. The bill requires third parties providing service on behalf of contractors to advise consumers about who is providing

service on their behalf. SB 757 clarifies that the prohibition of contractors requesting or accepting payment that exceeds the value of work performed or materials delivered extends to advance payment in whole or in part from any financier for the performance or sale of home improvement goods or services. Governor Newsom signed the bill on September 23, 2021 (Chapter 249, Statutes of 2021).

The following bills, reported in [Volume 26, No. 2 \(Spring 2021\)](#), died in committee or otherwise failed to be enacted during the 2020–2021 legislative session: [AB 769 \(Grayson\)](#), relating to broker-dealer exemptions, finders, and filings; [AB 1136 \(Luz Rivas\)](#), relating to PACE program enforcement and ancillary relief; [AB 1392 \(Levine\)](#), proposed banks and trust company applications; and [SB 476 \(Min\)](#), relating to CFL, PACE program administrators; [AB 1136 \(Luz Rivas\)](#) regarding PACE enforcement, [AB 1172 \(O'Donnell\)](#) pertaining to assets and accounting requirements of escrow agents, [SB 476 \(Min\)](#) regarding PACE program administrators, [SB 577 \(Limón\)](#) regarding financial institutions regulation.

## LITIGATION

- ***AMG Capital Management, LLC, et al v Federal Trade Commission***. Case No. 19-508 (U.S.). On April 22, 2021, the Supreme Court [decided](#) the FTC could not seek injunctive monetary relief in a judgment. *AMG Cap. Mgmt., LLC v. Fed. Trade Comm'n*, 593 U.S. \_\_\_, 141 S. Ct. 1341, 1349 (2021). The case revolved around Scott Tucker and his companies engaging in deceptive payday lending practices. *Id.* at 1344. The court held that Congress intended restitution in the form of monetary relief to be accomplished through FTC's administrative proceedings, not through judgments. *Id.* at 1349. "It is highly unlikely that Congress would have enacted provisions expressly authorizing *conditioned* and *limited* monetary relief if the [Federal Trade Commission]

Act, via § 13(b), had already implicitly allowed the Commission to obtain that same monetary relief and more without satisfying those conditions and limitations.” *Id.*

As this is a Federal case, it does not affect the state law of California. Still, it shows the trend and judgments of the highest court regarding injunctive monetary relief for deceptive practices in payday lending.