

# DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

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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 29, 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 by merging 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. 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 protect 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 broadly defined and may include various business opportunities in addition to 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 Banking Law (Financial Code section 1000 et seq.); 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 (CCFPL) (Financial Code section 90000 et seq.) and Student Loan Servicing Act (Financial Code section 28100 et seq.).

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 supervises and regulates financial activities not previously overseen by the Department, such as debt collection, debt relief, private post-secondary education finance, and newly emerging financial products or services; (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 Communications Division, which offers strategic messaging, media relations, and digital communications support.

On March 29, 2023, Governor Gavin Newsom [announced](#) the appointment of Greg Young of Martinez as Senior Deputy Commissioner of Corporations & Financial Institutions at DFPI. Young joined DFPI on March 30 and will be based in San Francisco. Prior to his appointment, Greg served as Community Lending Manager at Umpqua Bank since 2021, as a Life Agent at New York Life Insurance Company from 2019 to 2021, and as Vice President and Retail Sales Manager at Bank of America from 2016 to 2018.

On April 5, 2023, Daniel Quach joined DFPI as Chief Information Officer, based out of the San Francisco office. Daniel has more than 20 years of experience in Information Technology (IT) management. He joins DFPI from his current position as the Chief Information Officer for the City and County of San Francisco (CCSF) Department of Homelessness and Supportive Housing, where he was instrumental in building IT infrastructure for a newly created department from the ground up.

On March 2, 2023, Rebecca Martin joined DFPI as Deputy Commissioner for Consumer Services. Rebecca has more than 20 years of experience in multiple roles working for the California Department of Motor Vehicles. She has extensive knowledge and experience in the critical day-to-day operations of the DMV Command Center, which oversees three large contact centers and handles more than 12 million contacts annually. While in the Command Center, Rebecca managed several high-performing teams and worked seamlessly in the ever-changing, fast-paced environment during several phone platform migrations.

On February 2, 2023, Governor Gavin Newsom [announced](#) the appointment of Purvi Patel as Deputy Commissioner for Credit Unions at DFPI. Prior to her appointment, Patel served as

Assistant General Counsel at Self-Help Federal Credit Union since 2022; as Executive Staff at Self-Help Federal Credit Union from 2016 to 2022; and as Senior Fellow at New York City Economic Development Corporation from 2015 to 2016.

In February 2023, DFPI announced that it launched a new Consumer Resources webpage to better connect people to valuable financial education content, and consumer events and services. Consumers can now visit [www.dfpi.ca.gov/consumers](http://www.dfpi.ca.gov/consumers) for important consumer alerts and insights, information on consumer rights and on the industries DFPI regulates, free consumer events, guidance on filing a complaint with DFPI and verifying financial service providers, and more.

## **HIGHLIGHTS**

### **DFPI Takes Possession of Silicon Valley Bank**

On March 10, 2023, DFPI [announced](#) that pursuant to California Financial Code section 592, it took possession of Silicon Valley Bank, citing inadequate liquidity and insolvency. DFPI appointed the Federal Deposit Insurance Corporation (FDIC) as receiver of Silicon Valley Bank.

On March 12, FDIC announced actions to complete its resolution of Silicon Valley Bank “in a manner that fully protects all depositors. Depositors will have access to all of their money starting Monday, March 13. No losses associated with the resolution of Silicon Valley Bank will be borne by the taxpayer.” Also, on March 12, the Federal Reserve Board announced it would make available additional funding to eligible depository institutions to help assure banks have the ability to meet the needs of all their depositors.

Silicon Valley Bank is a state-chartered commercial bank based in Santa Clara and a member of the Federal Reserve System, with total assets of approximately \$209 billion and total

deposits of approximately \$175.4 billion as of December 31, 2022. Its deposits are federally insured by the FDIC subject to applicable limits.

On March 20, 2023, DFPI [announced](#) that it is conducting a comprehensive review of its oversight and regulation of Silicon Valley Bank and will issue a report by early May 2023. According to DFPI, “[t]hrough this review, we will examine how we can strengthen and update our system of financial regulation to meet emerging and evolving challenges.”

## **DFPI Continues to Implement Executive Order N-9-22, Addressing the State’s Crypto Industry**

According to [Towards Responsible Innovation](#), a joint report issued in December 2022 by the Governor’s Office of Business and Economic Development, the Business Consumer Services and Housing Agency, DFPI, and the Government Operations Agency, commenters suggested that California:

- Provide regulatory clarity—including by basing regulations on specific types of activities, products, and services (rather than specific entities).
- Harmonize with federal guidelines—including by modeling key terms and requirements on those used by federal regulators.
- Avoid over-regulation—including by minimizing compliance costs.
- Prioritize consumer protection by leveraging existing laws and creating disclosure requirements, consumer education, and enforcement.
- Establish cybersecurity standards—including raising existing standards.
- Address environmental risks—including by acknowledging existing risks posed by blockchain industries and incentivizing clean energy usage.

The Governor’s Executive Order also called on DFPI to issue crypto-related guidance to banks and credit unions. DFPI conducted a survey between late July and early September 2022, collecting responses from nearly 200 financial institutions. Preliminary findings from the survey indicated that roughly 20% percent of respondents offer or plan to offer crypto asset-related products or services and that credit unions are the type of licensee most likely to offer such products or services. DFPI was expected to issue guidance to state-licensed banks and credit unions in March 2023, but the release date was postponed.

As previously reported [[28:1 CRLR 102](#)], on May 4, 2022, Governor Gavin Newsom issued [Executive Order N-9-22](#) (Executive Order) to foster responsible innovation, bolster California’s innovation economy, and protect consumers. It aims to create a transparent regulatory and business environment for web3 companies that harmonize federal and California approaches, balances the benefits and risks to consumers, and incorporates California values such as equity, inclusivity, and environmental protection. In accordance with the Executive Order, DFPI issued an [Invitation for Comment](#) on June 1, 2022, seeking input from stakeholders and the public in developing guidance and, as appropriate, regulatory clarity and supervision of covered persons and service providers involved in the offering and provision of crypto asset-related financial products and services in California. By the August 5, 2022, deadline, 33 organizations had submitted [public comments](#) to DFPI in response to these questions. At this writing, no release date is available.

## **DFPI Participates in Joint Oversight Hearing on the State’s Regulation/Supervision of the Crypto Industry**

During a Joint Oversight Hearing of the Senate Committee on Banking and Financial Institutions and the Assembly Committee on Banking and Finance, held on February 22, 2023, entitled, “Harmful Innovation: What FTX’s Collapse Means for Consumers and California’s

Approach to Crypto,” DFPI’s General Counsel Avy Malik presented an update the state’s approach to regulating digital financial asset business activity, crypto complaints, DFPI’s role in the Governor’s Executive Order on crypto assets and blockchain technology, how the state’s depository institutions engage with crypto services, DFPI’s licensing implementation process, and consumer protection in the crypto context.

In response to Malik’s description of how DFPI is using various existing laws to address crypto-related malfeasance, Committee members expressed concern that the Department may be hampered by the state’s lack of a crypto-specific licensing and/or regulatory scheme. That concern was echoed by another presenter at the hearing, Robert Herrell, Executive Director of the California Federation of Consumers, who called on legislators to enact a licensing scheme that includes a vigorous pre-licensing application review process, and which sets clear markers for acceptable and unacceptable behavior. The entire oversight hearing can be viewed [here](#).

## **DFPI Launches Scam Tracker to Help the Public Spot Crypto Scams**

On February 16, 2023, DFPI [announced](#) the launch of the [DFPI Crypto Scam Tracker](#) to help Californians spot and avoid crypto scams. The tracker details apparent crypto scams identified through a review of complaints submitted by the public and allows California consumers and investors to do their own research and prevent harm to themselves and others. The Crypto Scam Tracker is a database that is searchable by company name, scam type, or keywords to learn more about the crypto-specific complaints DFPI has received. An accompanying glossary aims to help consumers better understand common scams. As reports of new crypto scams emerge, the DFPI will continually update this tracker to alert and protect the public promptly.

## **DFPI Joins \$22.5 Million Multistate Securities Settlement Against Crypto Platform Nexo Capital**

On January 26, 2023, DFPI announced it entered into a [settlement agreement](#) with Nexo Capital Inc. (Nexo), a Cayman Islands-based crypto asset company. The agreement resolves the DFPI's September 26, 2022, securities enforcement action in connection with Nexo's Earn Interest Product program. [*see* [28:1 CRLR 107](#)]

A North American Securities Administrators Association (NASAA) working group—composed of the DFPI and nine other state regulators—led a comprehensive investigation into Nexo's Earn Interest Product program. From September through November 2022, these regulators brought actions against Nexo, concluding that Earn Interest Product accounts are securities and require investor protections, such as registration and risk disclosures, before they can be offered and sold to investors.

The NASAA working group negotiated a \$22.5 million multistate settlement with Nexo on behalf of 53 United States jurisdictions. Under that settlement, Nexo has agreed to implement various investor protection procedures for the benefit of Nexo's U.S. investors. The U.S. Securities and Exchange Commission (SEC) entered into a separate settlement with Nexo for the same penalty amount.

According to DFPI, this settlement is a part of its larger effort to investigate companies that offer crypto interest accounts and hold them accountable when they have violated the law. It builds upon similar actions issued by the DFPI to CONST LLC, Celsius Network Inc., Voyager Digital LLC, and BlockFi Lending LLC. Celsius, Voyager, and BlockFi have filed for Chapter 11 bankruptcy.



## DFPI Takes Actions on Crypto Asset Accounts and Businesses

As previously reported [[28:1 CRLR 106](#)], DFPI has opened multiple investigations in connection with crypto companies, and has taken the following actions:

- On November 16, 2022, DFPI issued a [notice](#) to suspend SALT Lending LLC's California Financing Law license for 30 days pending the Department's investigation into SALT's recent announcement to limit its platform activity including pausing client withdrawals., and on November 23, 2022, DFPI [announced](#) the suspension of SALT Lending LLC's California Financing Law license for 30 days pending the Department's investigation into that announcement.
- On November 18, 2022, DFPI [announced](#) the suspension of BlockFi Lending LLC's California Financing Law lender license for 30 days pending the Department's investigation into BlockFi's recent announcement to limit its platform activity including pausing client withdrawals. DFPI followed up on December 15, 2022, with an [Accusation](#) and [Notice of Intention to Issue Order Revoking](#) BlockFi's license, and in March 2023 the parties entered into a [Stipulation](#) for the interim suspension of BlockFi's California Financing Law license; order to discontinue unsafe or injurious practices; and a desist and refrain order.
- On November 22, 2022, DFPI issued a desist and refrain order against [NovaTech](#) alleging that NovaTech sold unqualified securities and misrepresented itself as a registered hedge fund, a registered investment adviser, and a registered broker to convince investors that it was a legitimate investment opportunity. This action is in furtherance of the DFPI crackdown on crypto [High Yield Investment Programs \(HYIPs\)](#).
- On Nov. 22, 2022, DFPI issued a desist and refrain order against [Fundsz](#) alleging that Fundsz sold unqualified securities while assuring investors that its proprietary algorithm

would trade crypto assets and generate steady returns for investors averaging about 3% per week.

This action is in furtherance of the DFPI crackdown on crypto HYIPs.

- In December 2022, DFPI posted more than 30 [consumer alerts](#) highlighting fraudulent or concerning activities by cryptocurrency brokers.
- On December 5, 2022, DFPI [announced](#) an investigation into crypto-related lending company CONST LLC (doing business as “MyConstant”), which is not licensed to operate in California by DFPI.

## **Crypto Lender BlockFi to Refund \$100K**

On March 27, 2023, DFPI [announced](#) that New Jersey-based crypto lending platform BlockFi Lending LLC (BlockFi) agreed to direct its servicer to provide Californians more than \$100,000 in refunds, subject to the bankruptcy court’s approval. The refunds stem from BlockFi’s conduct following the crash of the FTX cryptocurrency exchange. On Nov. 10, 2022, BlockFi paused its platform and prohibited consumer withdrawals given its exposure to FTX. BlockFi subsequently filed a petition for chapter 11 bankruptcy on Nov. 28, 2022.

DFPI’s investigation uncovered that the company failed to provide timely notification to borrowers that they could stop repaying their BlockFi loans. This resulted in California borrowers remitting at least \$103,471 in loan repayments to BlockFi’s servicer while they were unable to withdraw funds and collateral from BlockFi’s platform. BlockFi recently filed a motion in the bankruptcy court, requesting permission to direct its servicer to return these loan repayments. The hearing is scheduled for April 19, 2023.

## **DFPI Announces Voluntary Liquidation of Silvergate Bank**

On March 8, 2023, DFPI [announced](#) that Silvergate Bank, a state-chartered bank under the supervision of DFPI, voluntarily began the process of liquidation. Silvergate Bank is based in La Jolla, CA and served as one of the major banks for the crypto industry. In a statement, DFPI Commissioner Clothilde V. Hewlett said “the Department of Financial Protection and Innovation is monitoring the situation closely to facilitate the safe and expeditious voluntary liquidation of Silvergate Bank. The Department is evaluating compliance with all financial laws, as well as safety and soundness obligations, and is working closely with relevant Federal counterparts.”

## **DFPI Continues Crackdown on Student Loan Debt Relief Companies**

On February 28, 2023, DFPI [announced](#) that it entered into a [Consent Order](#) with an unlicensed Orange County student debt relief company, EDU Doc Support, LLC (EDU) and its owner, Hau H. Nguyen (Nguyen). The announcement is part of a continuing crackdown against student loan debt relief companies violating the California Consumer Financial Protection Law (CCFPL) and the Student Loan Servicing Act (SLSA). As part of DFPI’s order, EDU and Nguyen were ordered to rescind all debt relief, debt management, or debt consulting service agreements, and provide refunds to California consumers.

According to DFPI, student loan debt relief companies purport to help student loan borrowers manage or reduce their student loan repayment for a fee. Often these companies charge fees for services that federal loan servicers provide at no charge or that borrowers can do on their own. Borrowers can educate themselves on their options to manage or reduce monthly payments by asking their servicer for income-driven repayment or pausing loans by applying for forbearance.

## **DFPI Continues Crackdown on Debt Collection Scams**

On January 30, 2023, DFPI announced that it issued enforcement actions against five debt collectors for unlicensed activity under the Debt Collection Licensing Act (DCLA) and unlawful and deceptive acts or practices in violation of the California Consumer Financial Protection Law (CCFPL).

The subjects of the January 30th desist and refrain orders are entities representing themselves as debt collectors. The orders allege that the subjects engaged in a variety of different unlawful and deceptive practices, including engaging in debt collection in California without a license from DFPI; attempting to collect a debt that a consumer did not owe; making unlawful threats to sue on debts; making false claims of pending lawsuits; failing to notify consumers of their right to request validation of debts; making false claims about the authority to collect a debt; unlawfully threatening to seize property; and failing to provide a “validation notice” as required by federal law.

Through these five separate enforcement actions, DFPI ordered the subjects to pay penalties totaling \$120,000 and to desist and refrain from violating consumer protection laws.

## **MAJOR PUBLICATIONS**

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

- [\*Towards Responsible Innovation\*](#), An interagency blockchain progress report released by the Governor’s Office of Business and Economic Development, the Business Consumer Services and Housing Agency, DFPI, and the Government Operations Agency, December 2022 (pursuant to the Governor’s Executive Order N-9-22 (EO), reflects the

Administration’s work to implement the Executive Order in the seven months since its issuance, and provides six recommendations for future consideration and/or implementation).

- [\*Office of the Ombuds, FY 2021–22 Report\*](#), DFPI Office of the Ombuds, December 2022 (pursuant to [\*AB 1864 \(Limon\) \(Chapter 157, Statutes of 2020\)\*](#)) reports on actions taken in furtherance of the Office’s primary function to ensure DFPI provides the highest level of customer service to the public including consumers, consumer groups, licensees, prospective licensees, and trade groups. The report highlights specific accomplishments, discusses issues and trends, and provides recommendations to improve DFPI’s functions and efficiencies).

- [\*Annual Report of Activity Under the California Consumer Financial Protection Law, 2022\*](#), DFPI, April 2023 (Pursuant to Financial Code section 90018, reports on actions taken during the prior year under the CCFPL, including, but not limited to, rulemaking, enforcement, oversight, consumer complaints and resolutions, education and research, and the activities of the Office of Financial Technology Innovation. This report represents the second full year of CCFPL implementation and highlights data and statistics related to CCFPL implementation activities for the calendar year reporting cycle, January 1, 2022, through December 31, 2022.).

- [\*CalMoneySmart Annual Report 2021–2022\*](#), DFPI, January 2023 (pursuant to Financial Code section 24001(g), reports on the second year of the CalMoneySmart program, which offers grants to qualifying nonprofit organizations to design, develop, or offer free classroom or web-based financial education and empowerment content intended to help unbanked and underbanked consumers achieve, identify, and access lower-cost financial products and services, establish or improve their credit, increase their savings, or lower their debt; provide individualized, free financial coaching to unbanked and underbanked consumers; and design, develop, or offer a free financial product or service intended to help unbanked and underbanked

consumers identify and access responsible financial products and financial services, establish or improve their credit, increase their savings, or lower their debt).

- [\*Annual Report of Income from Fees on Nonsufficient Funds and Overdraft Charges\*](#), DFPI, March 2023 (pursuant to Financial Code section 521, presents fee income from nonsufficient funds and overdraft charges as a percentage of state-chartered bank and credit union net income and total income).

## **RULEMAKING**

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

- **PRO 01/21 – CCFPL/CFL/CDDTL/SLSA Registration Requirements under the CCFPL:** On March 7, 2023, DFPI [published notice](#) of its intent to adopt sections 1000, 1001, 1002, 1003, 1004, 1010, 1011, 1012, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1030, 1031, 1032, 1033, and 1034 to Article 1; sections 1040, 1041, 1042, 1043, 1044, and 1045 to Article 2; and sections 1048, 1050, 1051, and 1052 to Article 3 of Subchapter 4; section 1430.1 to Article 3, and sections 1461, 1462, 1462.5, 1463, 1464, 1465, and 1466 to Article 4 of Subchapter 6; section 2030.5 to Article 3 of Subchapter 13; and section 2044.1 to Article 6 of Subchapter 15, Title 10 of the CCR. Among other things, the proposed sections would define the terms used in the proposed rules; identify the persons who must register under the proposed rules as persons who provide the following products and services: debt settlement, student debt relief, education financing, and income-based advances; require separate registration for each subject product offered or provided by an applicant; clarify the prohibitions against making false or misleading statements in an application or annual report and making any representation that a registrant’s practices or business has been approved by DFPI; establish the process for registering with DFPI, including the

application form and the information that must be submitted as part of the application, requiring the application to be submitted to the Department through the Nationwide Multistate Licensing System and Registry, and requiring registrants to pay an application fee of \$350; establish the processes, including time frames, for approving registrations and the abandonment of registrations; establish the process for registrants to report changes to the application information to DFPI and the time frames for reporting the information; require registrants to establish a designated email address to enable DFPI to send notices and other communications to registrants; provide that the applications and annual reports are not subject to public disclosure; and establish the requirements for revoking and surrendering registrations. Public comments are due by May 17, 2023.

- **PRO 01/22 – CCFPL Crypto Asset-Related Financial Products and Services:**

As previously reported [*see* [28:1 CRLR 111](#)], on June 1, 2022, and in response to Governor Gavin Newsom’s Executive Order discussed above, DFPI published an [invitation for comments](#) to seek input from stakeholders and the public in developing guidance and, as appropriate, regulatory clarity and supervision of covered persons and service providers involved in the offering and provision of crypto asset-related financial products and services in California. By the August 5, 2022, deadline, 33 organizations and/or individuals submitted [public comments](#) to DFPI in response to its invitation (see HIGHLIGHTS). At this writing, no further action has been taken by DFPI in response to the comments it received.

**PRO 02/21 – CCFPL Commercial Financial Products and Services:** On February 24, 2023, DFPI issued a [Notice of First Modification to Proposed Action](#), and provided until March 13, 2023 for comments regarding the [revised text](#). At this writing, this regulatory package is pending review by DFPI.

As previously reported [[28:1 CRLR 112](#)], on June 24, 2022, DFPI [published notice](#) of its intent to rename subchapter 4 and adopt article 4, consisting of sections 1060, 1061, and 1062, in Title 10, Chapter 3 of the CCR. The proposed regulations would implement provisions of the CCFPL related to the offering and provision of commercial financing and other financial products and services to small businesses, nonprofits, and family farms. Among other things, this proposed regulation would make it unlawful for covered providers, as defined, to engage in unfair, deceptive, or abusive acts or practices; provide standards for determining whether an act or practice is unfair, deceptive, or abusive; define small business, nonprofit, and family farm, among other terms; clarify DFPI's ability to enforce the regulation's provisions; require covered providers, as defined, to submit annual reports containing information about their provision of commercial financing or other financial products and services to small businesses, nonprofits, and family farms; identify persons excluded from the reporting requirement; specify the information required in the reports, as well as provide guidance on calculating or determining certain information; and clarify the obligations of those also submitting annual reports to DFPI as licensees under the CFL. By the August 8, 2022, deadline, 14 organizations and/or individuals submitted [public comments](#) on the initial proposed text.

**PRO 06/21 – Student Loan Servicing Act and the Student Loans: Borrower Rights Law:** On January 6, 2023, DFPI published [notice of modifications](#) and released the [revised text](#) for this rulemaking proposal; the public comment deadline was Jan. 26, 2023. On March 6, 2023, DFPI published a [notice of second modifications](#) and released the [second revised text](#); public comments were due by March 23, 2023. At this writing, this regulatory package is pending review by DFPI.



As previously reported [[28:1 CRLR 112](#)], on September 9, 2022, DFPI published [notice](#) of its intent to amend sections 2032, 2033.5, 2034.5, 2035, 2036.5, 2040, 2040.5, 2041, 2042, 2042.5, and 2043, and adopt sections 2033.75, 2042.65, and 2042.75 to Title 10 of the CCR. Among other things, according to the [Initial Statement of Reasons](#), the proposed changes would clarify that all education financing products are student loans within the definition of student loan in the Student Loan Servicing Act and the Student Loans: Borrower Rights law; clarify that servicers of all education financing products must be licensed as student loan servicers under the Student Loan Servicing Act; clarify that servicers of all education financing products are subject to and must comply with all laws applicable to student loan servicers; define terms used in the rules relating to education financing products; specify that servicers of all education financing products must submit an annual report to DFPI regarding the volume and dollar amount of all education financing products serviced during the previous year, on the form specified by DFPI; and revise certain existing regulations to remove requirements deemed unnecessary, based on DFPI's experience administering the Student Loan Servicing Act, to reduce regulatory burden. By the October 28, 2022, deadline, five organizations and/or individuals submitted [public comments](#) on the initial proposed text.

**PRO 03/21 – CCFPL Complaints and Inquiries:** On December 22, 2022, DFPI released a [notice of modifications](#) and its [revised proposal](#); comments were originally due by Jan. 13, 2023, but DFPI [extended](#) the deadline to Jan. 20, 2023. On March 23, 2023, DFPI released a [second notice of modifications](#), and the [second revised proposal](#); comments were due by April 7, 2023. On April 13, 2023, DFPI released a [third notice of modifications](#), and the [third revised proposal](#); comments were due by April 29, 2023.

As previously reported [[28:1 CRLR 113](#)], on May 20, 2022, DFPI [published notice](#) of its intent to adopt Article 5, including sections 1070, 1071, 1072, 1073, 1074, and 1075, to Title 10, Chapter 3 of the CCR. These regulations would implement, interpret, and make specific Financial Code section 90008(a), (b), and (d)(2)(D), to set forth written policies and procedures regarding the handling of complaints and inquiries. By the July 5, 2022 deadline, 35 individuals and/or organizations had submitted [public comments](#).

- **PRO 07/21 – Investment Adviser Representative Continuing Education:** On November 16, 2022, DFPI published [notice](#) of its intent to adopt section 260.236.2 of Subchapter 2 of Chapter 3 of Title 10 of the CCR, relating to the implementation of continuing education requirements for Investment Adviser Representatives (IAR) and parallels the Model Rule developed by the North American Securities Administrators Association. The proposed regulation would require that IARs complete twelve total hours of continuing education annually, with six hours focused on products and practice and six hours focused on ethics and professional responsibility. The public comment period ended on January 16, 2023; at this writing, the proposal is pending review by DFPI.

## **LEGISLATION**

- [AB 39 \(Grayson\)](#), as amended January 30, 2023, would add Division 1.25, commencing with section 3101 to the Financial Code. This bill would enact the Digital Financial Assets Law. Sponsored by the Consumer Federation of California (CFC), the bill would, on and after January 1, 2025, prohibit a person from engaging in digital financial asset business activity, or holding itself out as being able to engage in digital financial asset business activity, with or on behalf of a resident unless any of certain criteria are met, including the person is licensed with DFPI. The bill would define “digital financial asset” to mean a digital representation of value that

is used as a medium of exchange, unit of account, or store of value, and that is not legal tender, whether or not denominated in legal tender, except as specified. The bill would, among other things, authorize DFPI to conduct examinations of a licensee, as prescribed, and would require a licensee to maintain, for all digital financial asset business activity with, or on behalf of, a resident for 5 years after the date of the activity, certain records, including a general ledger posted at least monthly that lists all assets, liabilities, capital, income, and expenses of the licensee. This bill would also authorize DFPI to take an enforcement measure against a licensee or person that is not a licensee but is engaging in digital financial asset business activity with, or on behalf of, a resident in any of certain instances, including the licensee or person materially violates the provisions of the bill, a rule adopted or order issued under the bill, or a law of this state other than the bill that applies to digital financial asset business activity of the violator with, or on behalf of, a resident. The bill would prescribe certain civil penalties for violations of its provisions. This bill would also require a covered person, before engaging in digital financial asset business activity with a resident, to make certain disclosures to the resident, including a schedule of fees and charges the covered may assess, the manner by which fees and charges will be calculated if they are not set in advance and disclosed, and the timing of the fees and charges. The bill would define “covered person” to mean a person required to obtain a license under the Digital Financial Assets Law. And finally, the bill would require an applicant, before submitting an application, to create and, during licensure, maintain in a record policies and procedures for, among other things, an information security program and an operational security program.

According to CFC, this bill would require the cryptocurrency industry to follow common sense consumer protections by requiring the licensure and regulation of digital financial assets such as cryptocurrency companies. CFC contends that AB 39 is generally similar to the approach

taken by 2022's bipartisan AB 2269, also authored by Grayson, which was vetoed last year by Governor Newsom. [[28:1 CRLR 105](#)] CFC notes that the 2023 legislation includes some modifications meant to ensure a timely and efficient ramping up of DFPI's licensing activity while accounting for certain efficiencies to make DFPI's activities clear and transparent. [*A. B&F*]

- [AB 1312 \(Committee on Banking and Finance\)](#), as introduced February 16, 2023, would amend section 1788.18 of the Civil Code and sections 1674 and 22169 of the Financial Code. This bill would make technical, non-substantive changes to Financial Code sections 1674 (the Banking Law) and 22169 (the California Financing Law), as well as Civil Code section 1788.18. [*A. Rules*]

- [AB 1103 \(Weber\)](#), as amended March 9, 2023, would add Division 16, commencing with section 33000, to the Financial Code. This bill would revise the California Financing Law to require a person who offers a deferred interest period to consumers to provide effective notice to a consumer when a deferred interest period, as defined, is coming to an end. The bill would define "effective notice" to mean notice that is, among other things, reasonably calculated, and intended in good faith, to inform a consumer that a deferred interest period is ending. [*A. B&F*]

- [AB 1296 \(Grayson\)](#), as amended April 11, 2023, would amend, repeal, and add section 90018 of the Financial Code. This bill would, until January 1, 2028, require this report to separate information described above with respect to crypto assets and associated consumer financial products and services, as specified, from information described above with respect to other consumer financial products and services. The California Consumer Financial Protection Law generally regulates the provision of consumer financial products and services by covered persons. The law requires the DFPI Commissioner to, among other things, prepare and publish on

DFPI’s internet website an annual report detailing actions taken during the prior year under the law; the report must include information on actions taken with respect to rulemaking, enforcement, oversight, consumer complaints and resolutions, education, and research. *[A. B&F]*

- [SB 33 \(Glazer\)](#), as introduced December 5, 2022, would amend section 22804, and amend and repeal sections 22802 and 22803 of the Financial Code. This bill would remove the January 1, 2024, sunset date for the requirement that a commercial financing provider include “total cost of financing expressed as an annualized rate” in its required disclosure to financing recipients. *[S. Appr]*

- [SB 484 \(Newman\)](#), as amended March 30, 2023, would amend section 17005.3 of the Financial Code, and for purposes of the Escrow Law, would change the definition of “customer contact center” to mean a facility operated by an escrow agent for the purpose of remotely accessing an escrow file to further the processing of the escrow, including, but not limited to, responding to customer electronic messages and telephone inquiries, subject to specified limitations. *[S. Appr]*

- [SB 666 \(Min\)](#), as amended April 10, 2023, would add Title 1.90, commencing with section 1799.300, to Part 4 of Division 3 of the Civil Code. This bill, as amended April 10, 2022, would prohibit a covered entity from charging specified fees in connection with a commercial financing transaction with a small business, including, among others, a fee for accepting or processing a payment required by the terms of the commercial financing contract as an automated clearinghouse transfer debit, a fee for providing a small business with documentation prepared by the covered entity that contains a statement of the amount due to satisfy the remaining debt, as specified, and a fee in addition to a loan origination fee that does not have a clear corresponding service provided for the fee, as specified. If a covered entity violates these provisions, the bill

would entitle a recipient to specified relief, including actual damages, statutory damages, and attorney’s fees and costs. The bill would make a waiver of these provisions contrary to public policy and void and unenforceable. The bill would define various terms for these purposes. [S. B&FI]

- [SB 869 \(Glazer\)](#), as introduced February 17, 2023, would add section 22605 to the Financial Code. This bill would require a person who provides commercial brokerage services to a borrower in a commercial loan transaction by soliciting lenders or otherwise negotiating a commercial loan, to be licensed by the DFPI Commissioner. The bill would impose a fiduciary responsibility to the borrower upon a person who provides commercial brokerage services in a commercial loan transaction by soliciting lenders or otherwise negotiating a commercial loan, as those terms are defined pursuant to the bill, regardless of whomever else the commercial broker may be acting as an agent for in the course of the loan transaction. The bill would specify that this responsibility includes the duty to exercise the utmost honesty, absolute candor, integrity, and unselfishness toward the borrower, and that the commercial broker place the economic interest of the borrower ahead of their own economic interest. [S. B&FI]

## LITIGATION

- *Federal Trade Commission and California Department of Financial Protection and Innovation v. Green Equitable Solutions, dba Academy Home Services, et al.*, Case No. 2:22-cv-6499-FLA-MAR (C.D. Cal.). Beginning in November 2022, defendants filed their answers [[1](#), [2](#), [3](#), [4](#), [5](#)] to plaintiffs’ First Amended Complaint, a court-ordered mediation proceeding was scheduled for April 19, 2023, and the court set a jury trial for February 13, 2024.

As previously reported [*see* [28:1 CRLR 120](#)], on September 12, 2022, the FTC and DFPI filed a [joint complaint](#) alleging that the defendants, doing business through multiple entities located in the Los Angeles area since 2018, deceived hundreds of homeowners nationwide into paying for fraudulent mortgage modification services, and on September 29, 2022, the court issued a [temporary restraining order](#) to halt the scheme and freeze assets and appointed a receiver to assist with taking over the defendants' businesses and administer any potential relief for victims.

- ***Commodities Future Trading Commission, and California Department of Financial Protection and Innovation, et al. v. Safeguard Metals LLC and Jeffrey Santulan a/k/a Jeffrey Hill, Case No. 2:22-cv-00691 (C.D. Cal.)***. On April 5, 2023, the court ordered that the last day to conduct a Settlement Conference/Mediation is June 30, 2023, and the last day to file the Joint Report regarding the Results of the Settlement Conference/Mediation is July 5, 2023.

As previously reported [*see* [28:1 CRLR 120](#) and [27:2 CRLR 230](#)], on May 25, 2022, plaintiffs filed a [First Amended Complaint](#), asserting 55 additional causes of action, four new parties, and new factual allegations; on August 24, 2022, the court denied defendants' Motion to Dismiss First Amended Complaint, and defendants filed their [Answer to the First Amended Complaint](#) on September 7, 2022; and on February 1, 2022, DFPI announced its participation with the federal CFTC and 26 other state regulators in a federal lawsuit in the United States District Court for the Central District of California against Safeguard Metals LLC and its principal and owner, Jeffrey Santulan, for perpetrating a \$68 million fraud scheme that targeted the elderly population.

- ***Opportunity Financial LLC v Commissioner of Department of Financial Protection and Innovation, Case No. 22STCV08163 (Super. Ct., Los Angeles County)***. On November 18, 2022, DFPI filed a Demurrer with Motion to Strike, and on January 30, 2023, DFPI

filed a Motion for Preliminary Injunction. The Motion asks the court to bar OppFi from offering California consumers new loans with interest rates that exceed the interest rate caps defined in the California Financing Law and the state usury law. At this writing, the court was scheduled to hold a hearing on DFPI’s Motion for Preliminary Injunction on May 9, 2023.

As previously reported, on March 7, 2022, Opportunity Financial LLC (OppFi) filed a complaint for declaratory and injunctive relief in Los Angeles County Superior Court, asking the court to block DFPI’s enforcement of a 36% interest rate cap against the company’s branded loans and seeking to block DFPI from enforcing California usury laws. The fintech lender argues they are exempt from the maximum rates under CFL, [AB 539 \(Limón\) \(Chapter 708, Statutes of 2019\)](#), as the loans originate from an out-of-state bank partner, FinWise Bank of Utah. The complaint alleges that DFPI was threatening immediate enforcement action. [[27:2 CRLR 249](#)]

In response to OppFi’s complaint, DFPI filed a cross-complaint against OppFi for violation of the CFL and CCFPL, alleging that “OppFi is the true lender of [the Program Loans]” based on the “substance of the transaction” and the “totality of the circumstances,” with the central consideration being “which entity– bank or non-bank– has the predominant economic interest in the transaction.” DFPI sought to block OppFi from charging the higher rates and make the lender compensate affiliated consumers and pay \$100 million in fines. OppFi’s demurrer to DFPI’s cross-complaint was overruled by the Los Angeles Superior Court in Sept. 2022. On October 17, 2022, OppFi filed its [Answer](#) to DFPI’s cross-complaint, as well as a [Cross-Complaint and Cross-Petition for Writ of Mandate](#). [[28:1 CRLR 122](#)]