

Differences Between California's Department of Business Oversight and Department of Financial Protection and Innovation

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	Prior California Regime: California's Department of Business Oversight (DBO)	New California Regime: California's Department of Financial Protection and Innovation and Consumer Financial Protection Law (Cal. Financial Code §§ 300, et seq.)
Oversight	<p>Oversee the following:</p> <ul style="list-style-type: none"> • Banks or trust companies. • Savings associations, credit unions, and money transmitters. • Issuers of stored value and payment instruments. • Business and industrial development corporations. • Insurance premium finance agencies. • Persons offering or making any contract constituting bucketing. • Persons offering or selling off-exchange commodities. • Deferred deposit originators. • Finance lenders and brokers. • Residential mortgage lenders and servicers. • Capital access companies. • Check sellers, bill payers, and proraters. • Securities issuers, broker-dealers, agents, and investment advisers/representatives. • Mortgage loan originators employed or supervised by finance lenders or residential mortgage lenders. • Escrow agents and franchisors. • Persons holding securities as custodians on behalf of securities owners. <p>Cal. Fin. Code § 300(b)</p>	<p>All classes of entities listed under the DBO oversight, as well as:</p> <ul style="list-style-type: none"> • Persons offering or providing consumer financial products or services in California. • Property Assessed Clean Energy program administrators. <p>Cal. Fin. Code § 300(b)</p> <p>The DFPI has broad discretion to determine what a "financial product or service" is. If a product or service is "[e]ntered into or conducted as a subterfuge or with a purpose to evade any consumer financial law" or "[p]ermissible for a bank...to offer or provide... and has, or likely will have, a material impact on consumers", the DFPI may determine that financial product or service falls within DFPI's coverage and oversight (subject to some exceptions).</p> <p>CCFPL § 90005(k)(12)(A)-(B)</p> <p>Therefore, FinTech companies, payday lenders, debt collectors and other service providers that had not been regulated by the state, may now be.</p>
Purview	<p>Laws of the state relating to the entities listed above (see Oversight).</p> <p>Cal. Fin. Code § 300(b)</p>	<p>In addition to DBO authorities, the CCFPL gives the DFPI enhanced oversight and establishes authority to enforce laws against unfair, deceptive, or abusive acts or practices (UDAAP) by adding "abusive" to "unfair or deceptive" acts or practices. Moreover, the DFPI can prescribe rules and regulations specifying UDAAPs, which would apply to covered persons providing consumer financial products or services.</p> <p>However, the following are exempt from the CCFPL:</p>

	Prior California Regime: California's Department of Business Oversight (DBO)	New California Regime: California's Department of Financial Protection and Innovation and Consumer Financial Protection Law (Cal. Financial Code §§ 300, et seq.)
		<ul style="list-style-type: none"> Banks, bank holding companies, trust companies, savings and loan associations, saving and loan holding companies, credit unions when acting under the authority of, or holding a license, charter, or certificate under, federal law or another state's law. A licensee of any other state agency is exempt so long as it is acting under the authority of that agency's license. Certain persons or employees are exempt to the extent they are acting under the authority of a DFPI license, certificate, or charter. <p>CCFPL § 90002(b)-(c)</p>
Registration	Registration as required by the California Financial Code or California Corporations Code.	<p>The CCFPL allows the DFPI to prescribe registration requirements for "covered person(s) engag[ing] in the business of offering or providing a consumer financial product or service," including requiring filing under oath, payment of registration fees, and registration through NMLS.</p> <p>CCFPL § 90009(a)(1)</p> <p>Exceptions include a covered person:</p> <ul style="list-style-type: none"> (i) Already licensed under DFPI and providing their product or service under the scope of that license. (ii) Licensed or registered with another agency unless the product or service is not regulated by that other agency. (iii) Licensed by DFPI or a federal agency and engaging in deposit-taking activity unless the product or service is not regulated by the agency license. <p>CCFPL § 90009(a)(2)(A)-(C)</p>
Consumer Complaints	N/A	<p>DFPI must establish procedures for covered persons, requiring a timely response to consumer complaints or inquiries. Consumer reporting agencies are exempt.</p> <p>CCFPL § 90008(a)-(c)</p> <p>Before the DFPI can commence an enforcement action based on a consumer complaint against a covered person, it must promulgate regulations.</p> <p>CCFPL § 90008(e)</p>

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<p>Enforcement Authority</p>	<p>May exercise any powers necessary or convenient to enforce the laws of the state applicable to the entities described above (see Oversight).</p> <p>Cal. Fin. Code § 326(a)</p>	<p>In addition to DBO authority, the DFPI may bring a civil action or other appropriate proceeding to enforce provisions of the Consumer Financial Protection Act (CFPA) or the CFPB's regulations with respect to an entity that is licensed, registered, or subject to the DFPI's oversight.</p> <p>Furthermore, the CCFPL allows the DFPI to take any action authorized by law against a licensee or entity subject to DFPI oversight, including civil actions, to enforce any rule, order, or condition imposed under the CCFPL or any other law or regulation the DFPI is authorized to enforce.</p> <p>CCFPL § 90011-90016</p> <p>Therefore, the DFPI may bring enforcement actions against an entity that offers financial products or services but is not subject to licensing requirements.</p>