

The California Consumer Financial Protection Law Brings More Providers of Consumer Financial Products and Services into the Regulatory Tent

On August 31, 2020, the California legislature passed the [California Consumer Financial Protection Law](#) (CCFPL). The law reflects Governor Newsom’s vision of a much more powerful banking agency with new registration authority, UDAAP authority mirroring the authority of the CFPB, and expanded enforcement authority. But important amendments adopted by the legislature will exempt many regulated entities from the scope of the law and will impose limits on the new Department of Financial Protection and Innovation’s (DFPI) exercise of its authority.

Morrison Foerster highlights the key provisions of the CCFPL below.

Focus on Consumer Protection

Although most of the CCFPL comes directly from Dodd-Frank Act Title X, the statutory purpose differs from the purpose and objectives of Dodd-Frank. The legislative findings assert that “lack of [a dedicated financial services regulator with broad authority over providers of financial products and services] has left consumers vulnerable to abuse and forced California businesses to compete with unscrupulous providers.”[1] They refer to UDAAP and to discriminatory practices multiple times. They also refer to technological innovation that “offers great promise,” but also “poses risks to consumer and challenges to law enforcement.”[2]

In contrast, the objectives of Dodd-Frank Title X are much more balanced, referring to protecting consumers from UDAAP and discrimination, but also: (a) the need for consumers to have timely and understandable information to make responsible decisions; (b) the need to reduce unwarranted regulatory burdens; (c) consistent enforcement of federal consumer financial law to promote fair competition and transparency; and (d) efficient operation of markets for consumer financial products and services.[3]

Expanded Jurisdiction Bounded by Significant Exemptions

Since the proposed legislation was introduced, the DBO has consistently explained its view that the CCFPL would not change the regulatory landscape for state-chartered and state-licensed entities. This position is reflected in the version of the CCFPL passed by the legislature, which exempts national banks, banks chartered by California or any other state, and existing DBO licensees other than payday lenders and student loan servicers, from the CCFPL.[4] The CCFPL also exempts licensees and their employees of any California state agency other than the DFPI where the licensee or employee is acting under the authority of the other state agency’s license. For example, this should exempt real estate licensees under the Real Estate Law and their employees acting under those licenses.

The broad jurisdiction in the statute, then, applies almost exclusively to entities that previously

were not licensed by the DBO.[5] These entities must be “covered persons,” which are persons engaging in offering or providing consumer financial products or services, affiliates that act as service providers, and any service provider that engages in the offering or provision of its own consumer financial product or service.[6] As in Title X, a “service provider” is any person that provides a material service to a covered person in connection with the covered person’s offering or providing of a consumer financial product or service.[7]

Whether an entity is a “covered person” depends on whether it offers or provides a “consumer financial product or service.” The definition of “financial product or service” mirrors the broad definition in Title X, with the addition of brokering the offer or sale of a franchise in the state on behalf of another.[8] As in Dodd-Frank, the CCFPL authorizes the DFPI to issue regulations defining any other financial product or service based on specified criteria.[9]

UDAAP Authority

The CCFPL gives the DFPI the same UDAAP authority that Dodd-Frank Title X gives the CFPB: The DFPI can take enforcement action against covered persons for UDAAP violations and can issue regulations regarding UDAAP. [10]

The CCFPL also allows the DFPI to bring proceedings pursuant to the Dodd-Frank Title X provisions authorizing state regulators to enforce Title X and any regulations promulgated by the CFPB pursuant to Title X.[11] The DFPI can bring these proceedings against both covered persons under the CCFPL as well as existing DBO licensees, including California-licensed banks, savings and loans and credit unions, California Financing Law licensees, and California Residential Lending Act licensees.

The DFPI will have to give advance notice to the CFPB if it relies on this authority to bring actions against existing licensees. There is no similar requirement in the CCFPL for actions brought against covered persons that are not exempted.

The CCFPL authorizes the DFPI to prescribe rules defining UDAAP, which will apply to covered persons. The DFPI must interpret “unfair” and “deceptive” in accordance with Business & Professions Code section 17200 and cases interpreting that provision. The CCFPL defines “abusive” in the same way that it is defined under Dodd-Frank, and requires the DFPI to interpret the term consistently with Title X. Any inconsistency, though, is to be resolved in favor of greater protections and more expansive coverage. [12]

In the only provision in the law that does not concern consumers, the CCFPL authorizes the DFPI to define UDAAP in connection with the offering of commercial financing or other financial products and services to small businesses, nonprofits, and family farms.[13]

Next Steps and Timing

Governor Newsom has until September 30, 2020 to sign the CCFPL into law. If he does, it will become effective on January 1, 2021.

Takeaways

Providers of financial products and services to California consumers should buckle their seatbelts. Through the reorganization, the DFPI will have increased funding to expand supervision and enforcement for California state-chartered banks and existing licensees. The CCFPL will expand the DFPI's jurisdiction to cover previously unlicensed entities. Although banks and most other current DBO licensees are exempt from the CCFPL, the DFPI may be influenced by the broad UDAAP and enforcement provisions of the CCFPL to adopt a more aggressive posture to these exempt institutions as well.

The dual focus on consumer protection and innovation will draw the DFPI's focus to FinTechs and bank partnerships. The DFPI will have the opportunity to create clear rules that will allow FinTechs and established financial institutions to compete on a level playing field, to partner in providing new products, and to expand access to credit.

- [1] Cal. Fin. Code § 90000. The CCFPL adds Division 24, commencing with Section 90000 to the Financial Code.
- [2] Cal. Fin. Code § 90000(a).
- [3] 12 U.S.C. § 5511(b).
- [4] Cal. Fin. Code § 90002. The exemptions include licensees such as lenders, brokers, mortgage loan originators and program administrators under the California Financing Law, mortgage lenders, mortgage servicers, and mortgage loan originators under the California Residential Mortgage Lending Act, and money transmitters under the California Money Transmission Act.
- [5] Although supporters of the CCFPL repeatedly identified debt collectors as previously unlicensed entities that warranted the expanded authority provided by the proposed legislation, the legislature passed a separate law ([SB 908](#)) that requires licensing of debt collectors and grants the DFPI licensing, examination, investigatory, and enforcement authority over debt collectors.
- [6] Cal. Fin. Code § 90005(f).
- [7] Cal. Fin. Code § 90005(n); 12 U.S.C. § 5481(26)(A).
- [8] Cal. Fin. Code § 90005(k); 12 U.S.C. § 5481(15)(A), (B)(i).
- [9] Cal. Fin. Code § 90005(k)(12).
- [10] Cal. Fin. Code §§ 90012(a); 90009(c); 12 U.S.C. § 5531(a), (b).
- [11] Sec. 4 of the CCFPL, amending Cal. Fin. Code § 326(b).
- [12] Cal. Fin. Code § 90005(p).

[13] Cal. Fin. Code § 90009(e). Thus, the California Legislature continues to expand consumer protections to certain providers of smaller commercial loans. *See, e.g.*, Cal. Fin. Code § 22800, which governs commercial financing disclosures.