



## CALIFORNIA LEGISLATURE PASSES "MINI-CFPB" BILL

On August 31, 2020, the California legislature passed AB 1864, a bill that has been nicknamed the "Mini-CFPB" as it creates a state regulatory agency resembling the Consumer Financial Protection Bureau ("CFPB"). The bill would rename the "Department of Business Oversight" ("DBO") as the "Department of Financial Protection and Innovation" (DFPI). In addition to the existing powers already executed by the DBO, the new DFPI would also have the authority to bring a civil action to enforce the provisions of the federal Consumer Financial Protection Act of 2010 or regulations issued by the CFPB thereunder, with respect to an entity that is licensed, registered or subject to oversight by the DFPI.

The bill would also enact the California Consumer Financial Protection Law ("CCFPL"). The purpose of the CCFPL is to promote consumer welfare, fair competition and wealth creation in California by doing all of the following:

- (1) Promoting nondiscriminatory access to responsible, affordable credit on terms that reasonably reflect consumers' ability to repay;
- (2) Promoting nondiscriminatory access to consumer financial products and services that are understandable and not unfair, deceptive or abusive;
- (3) Protecting consumers from discrimination and unfair, deceptive and abusive acts and practices in connection with financial practices and services; and
- (4) Promoting nondiscriminatory consumer-protective innovation in consumer financial products and services.

The CCFPL prohibits (i) the use of or engaging in unfair, deceptive or abusive acts or practices with respect to consumer financial products or services and (ii) offering or providing any financial product or service to a consumer that is not in conformity with any consumer financial law.

The CCFPL applies to "covered persons," which means to the extent not preempted by federal law, any of the following: (i) any person that engages in offering or providing a consumer financial product or service to a resident of California, (ii) any affiliate of such a person if the affiliate acts as a service provider to the person or (iii) any service provider to the extent that the person engages in the

offering or provision of its own consumer financial product or service. "Service provider" is defined as any person that provides a material service to a covered person in connection with the offering or provision by that covered person of a consumer financial product or service, including a person that either: (i) participates in designing, operating or maintaining the consumer financial product or service or (ii) processes transactions relating to the consumer financial product or service, other than unknowingly or incidentally transmitting or processing financial data in a manner that the data is undifferentiated from other types of data of the same form as the person transmits or processes.

The CCFPL does not apply to (i) a bank when acting under the authority of a charter under federal law or the laws of another state and (ii) persons acting under the authority of certain licenses, certifications or charters issued by the DFPI, including any person licensed as a finance lender, broker, program administrator or mortgage loan originator under Division 9 of the Financial Code (commencing with Section 22000) and any person licensed as a residential mortgage lender, mortgage servicer or a mortgage loan originator under Division 20 of the Financial Code (commencing with Section 50000).

## CALIFORNIA LEGISLATURE PASSES COLLECTOR LICENSING LAW

On August 31, 2020, the California legislature passed SB 908, the Debt Collection Licensing Act, which would, beginning on January 1, 2022, provide for licensure, regulation and oversight of debt collectors by the DBO (or DFPI if AB 1864 is enacted).

The Debt Collection Licensing Act would prohibit any person from engaging in the business of debt collection in California without first obtaining a license. A person is acting in California if the person is located in California and is seeking to collect from a debtor that resides inside or outside California, or is located outside of California and is seeking to collect from a debtor that resides in California.

The bill would also amend the Rosenthal Fair Debt Collection Practices Act to include placing a telephone call without disclosing the caller's identity and sending digital or written communications that do not display the license number of the debt collector in at least 12-point type as prohibited debt collection practices.

The bill would establish the Debt Collection Advisory Committee, consisting of seven members appointed by the

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commissioner to advise the commissioner on matters relating to debt collection.

Both AB 1864 and SB 908 have been delivered to Governor Newsom to sign. Governor Newsom has 30 days from the date a bill is passed to approve or veto it. We will keep you updated on the status of each bill. If you have any questions please let us know. ☐

✧ *Mike Tomkies and Lindsay Valentine.*