SENATE COMMITTEE ON BANKING AND FINANCIAL INSTITUTIONS

2013 – 2014 LEGISLATIVE SUMMARY

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NOTE: On July 1, 2013, pursuant to Government Reorganization Plan Number 2, the Department of Financial Institutions (DFI) and Department of Corporations (DOC) were abolished. A new Department of Business Oversight (DBO) was created and given jurisdiction over all of the laws and programs previously overseen by DFI and DOC. Although some of the legislation heard by this Committee referred to DFI or DOC, all references in this report are to DBO, because it will administer the statutes going forward.

MORTGAGE LENDING AND SERVICING, FORECLOSURE PREVENTION

BILLS SIGNED INTO LAW

AB 1169 (Daly), Chapter 380, Statutes of 2013

Sponsored by the California Escrow Association. Sunsets on January 1, 2017. Defines the term "escrow agent rating service" and requires escrow agent rating services to comply with specified portions of the California Consumer Credit Reporting Agencies Act (CCCRAA) and establish policies and procedures reasonably intended to safeguard any personally identifiable information they obtain from an escrow agent from theft or misuse. For purposes of the bill, escrow agency rating services are considered to be credit reporting agencies, and escrow agents are considered to be consumers. Provisions of the CCCRAA the bill applies to escrow agent rating services include requirements to share specified information contained in consumers' credit files with consumers upon consumers' request and requirements to allow consumers to dispute certain types of negative information in their credit files.

AB 1700 (Medina), Chapter 854, Statutes of 2014

Sponsored by the Fair Housing Council of Riverside County. Revises the disclosure form that must be provided to prospective reverse mortgage borrowers, replaces the written checklist that is currently required to be provided to prospective reverse mortgage borrowers with a written worksheet guide whose content the bill prescribes (see below), and prohibits reverse mortgage lenders from accepting a final and complete reverse mortgage application from a prospective reverse mortgage borrower until at least seven days have passed since that borrower received reverse mortgage counseling. The written guide whose content the bill specifies includes the following five questions: What happens to others in your home after you die or move out? Do you know that you can default on a reverse mortgage? Have you fully explored other options? Are you intending to use the reverse mortgage to purchase a financial product? Do you know that a reverse mortgage may impact your eligibility for government assistance programs? Each question is prefaced by statutory language intended to help prospective borrowers answer the question and is followed by the question, Do you need to discuss this with your counselor? Yes or No.

AB 1770 (Dababneh), Chapter 206, Statutes of 2014

Sponsored by the California Land Title Association. Provides a procedure by which mortgage settlement providers (generally title and escrow companies) can, with the written approval of a borrower, request that a lender suspend and close a borrower's revolving line of credit. Prescribes the language of the form that may be used by escrow and title companies to request the suspension and closure of a revolving line of credit, but allows alternate formats to be used, if they are in substantially the same form as the form provided in statute. Provides that a borrower

is prohibited from drawing on, increasing, or incurring any additional principal debt on his or her revolving line of credit during the period of a suspension.

SB 310 (Calderon), Chapter 251, Statutes of 2013

Sponsored by the California Land Title Association. Provides that licensed title companies and underwritten title companies are not be liable for violations of the California Homeowner Bill of Rights when they record or cause to record a notice of default or notice of sale at the request of a trustee, substitute trustee, or beneficiary, in good faith and in the normal course of their business activities.

SB 1459 (Committee on Banking and Financial Institutions), Chapter 123, Statutes of 2014

Revises the educational requirements for mortgage loan originators (MLOs) licensed under the California Finance Lenders Law (CFLL) and California Residential Mortgage Lending Act (CRMLA) by requiring persons applying for an MLO license to complete two hours of pre-licensing education related specifically to California law and regulations and requiring MLO licensees to complete one hour of continuing education annually related specifically to California law and regulations. Also clarifies both the CFLL and CRMLA by providing that applicants for an MLO license under both laws must pass a qualified written test developed or otherwise deemed acceptable by the Nationwide Mortgage Licensing System and Registry.

SJR 19 (Correa), Resolution Chapter 116, Statutes of 2014

Sponsored by the California Association of Realtors. Express the Legislature's opposition to any reduction in the current national and high-cost conforming loan limits used by Fannie Mae and Freddie Mac, urges the Federal Housing Finance Agency not to implement any reductions to these limits, and urges the President of the United States and the United States Congress to join California in opposing any reduction in the national and high-cost conforming loan limits.

BILLS VETOED

None

BILLS ACTED UPON BY THE COMMITTEE, WHICH FAILED TO REACH THE GOVERNOR

None

UNSECURED LENDING

BILLS SIGNED INTO LAW

AB 1091 (Skinner), Chapter 243, Statutes of 2013

Revises the de minimis exemption for commercial finance lenders, by providing that the California Finance Lenders Law (CFLL) does not apply to any person who makes five or fewer commercial loans in a 12-month period, provided the loans are incidental to the business of the person relying on the exemption. Prior law triggered a licensing requirement as soon as more than one commercial loan was made per 12-month period. Clarifies existing law by expressly prohibiting a CFLL licensee from doing any of the following: violating Section 1695.13 of the Civil Code (which states that it is unlawful for any person to initiate, enter into, negotiate, or consummate any transaction involving residential real property in foreclosure, if such person, by the terms of such transaction, takes unconscionable advantage of the property owner in foreclosure); violating Section 17200 or 17500 of the Business and Professions Code (which state that it is unlawful to engage in unfair or deceptive business practices or advertising practices); knowingly misrepresenting, circumventing, or concealing, through subterfuge or device, any material aspect or information regarding a transaction to which the licensee is a party; or committing an act that constitutes fraud or dishonest dealings. Authorizes the Commissioner of the Department of Business Oversight (Commissioner), under both the CFLL and the California Residential Mortgage Lending Act, to issue citations and levy administrative fines of up to $2,500 to any person the Commissioner has cause to believe is violating any provision of either law or any rule or order issued pursuant to either law.

AB 2289 (Daly), Chapter 782, Statutes of 2014

Amends the Check Sellers, Bill Payers, and Proraters Law; Escrow Law; CFLL; Franchise Investment Law; California Deferred Deposit Transactions Law; and Corporate Securities Law of 1968 to define the term "electronic record;" provide that the Commissioner may, by rule or order, prescribe circumstances under which to accept electronic records or electronic signatures; clarify that this authority does not require the Commissioner to accept electronic records or electronic signatures; and state the intent of the Legislature that the Department of Business Oversight (DBO) is encouraged to continue to expand its use of electronic filings to the extent feasible, as budget, resources, and equipment are made available to accomplish that goal. Amends the Franchise Investment Law to define a complete application and provides DBO with an extra 15 days (30 days rather than 15) to review a complete application for franchise registration or renewal before that application automatically becomes effective.

SB 318 (Hill), Chapter 467, Statutes of 2013

Replaces the older Pilot Program for Affordable Credit Building Opportunities, established under the CFLL in 2010, which was scheduled to sunset on January 1, 2015, with a new small dollar loan pilot program under the CFLL, called the Pilot Program for Increased Access to Responsible Small Dollar Loans, which is scheduled to sunset on January 1, 2018. Relative to the older pilot program, the new pilot program: a) increases maximum allowable loan interest

rates to a maximum of 36% on loan principal amounts up to $1,000 and to a maximum of 35% on loan principal amounts between $1,001 and $2,500; b) increases maximum allowable origination fees to the lesser of 7% or $90 on the first loan to a borrower and the lesser of 6% or $75 on the second and subsequent loans made by the same lender to a borrower; c) eliminates the requirement that lenders reduce the interest rates on second and subsequent loans to the same borrower; d) increases the frequency with which an origination fee may be charged on a new loan to the same borrower to once every four months; e) increases the frequency with which an origination fee may be charged on a refinanced loan to the same borrower to once every eight months but imposes several limitations on licensees' ability to refinance loans; f) increases maximum allowable late fees to $14 after 7 days or $20 after 14 days and allows licensees to charge insufficient funds fees; g) increases the number of disclosures required at loan origination; h) requires licensees to provide reminder notices to borrowers before each payment due date; i) allows licensees to be accepted to the pilot program before they are approved data furnishers, provided they become data furnishers within six months of acceptance into the program; j) changes DBO's annual reporting requirements related to the pilot program; and j) makes related programmatic changes intended to remove unnecessary regulatory barriers to pilot program success.

SB 845 (Correa), Chapter 120, Statutes of 2014

Sponsored by the California State University Student Association. Requires the Board of Governors of the California Community Colleges (CCCs) and the Trustees of the California State University (CSU) and requests the Regents of the University of California (UC) and each governing body of an accredited private postsecondary educational institution to develop one or more model contracts for use at their respective systems to disburse financial aid, scholarship aid, campus-based aid, and/or school refunds onto debit, prepaid, or preloaded cards issued by a financial institution. Requires the CCCs and CSU and requests UC and the private colleges and universities subject to the bill to solicit public comment on their contracts before finalizing them and to make every model contract they develop publicly available on their Internet Web sites.

Requires each model contract to be developed in consultation with specified stakeholders, consider the best interests of students, and, at a minimum, contain provisions that reflect conditions required for compliance with federal regulations governing the disbursement of federal financial aid. Requires the CCCs and CSU and requests UC and private colleges and universities to consider additional topics when developing their model contracts, relating to the number of locations where students may make fee-free withdrawals using their cards, the sizes and types of fees that may be charged by card-issuing institutions, mechanisms to protect the privacy of student personal identification information, mechanisms to track and resolve student complaints about their cards, and mechanisms to resolve disputes between students and financial institutions related to the cards.

SB 896 (Correa), Chapter 190, Statutes of 2014

Sponsored by the Mission Asset Fund. Authorizes non-profit organizations that meet certain criteria to apply to DBO for an exemption from the CFLL, requires organizations granted exemptions by DBO to comply with specified requirements related to the loans they facilitate

and to reporting, and provides that non-profit organizations which partner with exempt non-profits are not subject to the CFLL, as long as the partnering non-profits meet the same requirements as the exempt organizations with which they partner. Generally speaking, lengths of the loans, underwriting requirements applied to the loans, disclosures provided to borrowers, fees that may be charged to borrowers, and other rules of the program are identical to the rules applicable to lenders accepted into the Pilot Program for Increased Access to Responsible, Small Dollar Loans. Significant differences between the lending authorized by SB 896 and SB 318 include the following: SB 896 loans must be zero-interest; may not be refinanced; may not carry delinquency fees, other than a maximum fee of $10 in the event of an insufficient funds charge; and may be stated-income, although the debt to income ratio for stated income loans is capped at 25% (versus 50% for loans where a borrower's income can be verified).

Gives the Commissioner the authority to examine each exempt organization and each partnering organization for compliance with the provisions of the bill, and the authority to decline to grant an exemption, suspend or revoke an exemption, terminate a written agreement between a partnering organization and an exempt organization, disqualify a partnering organization from engaging in certain activities, bar a partnering organization from facilitating lending at specific locations, and/or prohibit partnerships between exempt organizations and other specific organizations, as specified, and as necessary for the protection of the public. Requires the Commissioner to annually post a report on DBO's Internet web site summarizing lending activities facilitated by exempt organizations and their non-profit partners.

SB 1181 (Correa), Chapter 68, Statutes of 2014

Sponsored by Gunderson Dettmer Stough Villeneuve Franklin & Hachigian LLP. Increases, from one year to three years, the length of a commercial bridge loan to which the CFLL does not apply, when that loan is made by a venture capital company to an operating company. Provides that the CFLL does not apply to a venture capital investment that is made by a venture capital company in an equity security issued by an operating company.

BILLS VETOED

AB 1927 (Frazier)

As passed by the Senate Banking and Financial Institutions Committee, would have required the CCCs and CSU and requested UC and the governing bodies of accredited private nonprofit and for-profit postsecondary educational institutions to adopt policies to be used for negotiating contracts between their postsecondary educational institutions and banks and other financial institutions for the disbursement of students' financial aid awards and other funds onto debit cards, prepaid cards, or preloaded cards. Would have required that the policies best serve the needs of students and ensure that contracts between postsecondary educational institutions and banks or other financial institutions to disburse students' financial aid awards and other refunds onto debit card/prepaid/preloaded cards be consistent with federal law, and do at least all of the following: a) prohibit revenue sharing between a postsecondary educational institution and banks or other financial institutions; b) prohibit the sale or sharing of personal information that the student or the postsecondary educational institution provides the bank or other financial

institution; c) prohibit the bank or other financial institution from imposing a point-of-sale transaction fee on a student for the use of the debit card, prepaid card, or preloaded card; d) require the card-issuing bank or financial institution to provide students with a clear and conspicuous disclosure of all fees associated with the debit card, prepaid card, or preloaded card and to disclose that a co-branded card is not endorsed by the postsecondary educational institution before students opt to open a card account; and e) require the postsecondary educational institution to disclose to students the benefits and student responsibilities associated with for all financial aid disbursement options offered by the postsecondary educational institution.

As passed by the Senate Banking and Financial Institutions Committee, would have prohibited schools from finalizing these policies before soliciting and considering public comment. Would also have required the CCCs and CSU and requested UC and private colleges and universities to make every policy developed pursuant to the bill and every binding debit/prepaid/preloaded card contract they negotiated publicly available on their Internet Web sites.

After it passed the Senate Banking and Financial Institutions Committee, the bill was amended to require the CCCs, CSU, UC, and private colleges and universities to comply with its conditions, if they wished to participate in the Cal Grant program.

BILLS ACTED UPON BY THE COMMITTEE, WHICH FAILED TO REACH THE GOVERNOR

Bills that were referred to the Senate Banking and Financial Institutions Committee, but which were never heard by the Committee, are not included in this list.

AB 1162 (Frazier) -- Failed passage in the Senate Banking & Financial Institutions Committee

Would have required the CCCs and CSU and requested UC and the governing bodies of accredited private postsecondary educational institutions to adopt policies to be used to negotiate contracts with banks and other financial institutions for the disbursement of students' financial aid awards and other refunds onto debit cards, prepaid cards, or preloaded cards. The policies would have to have complied with relevant federal law governing the disbursement of financial aid. The bill also encouraged postsecondary educational institutions to consider a variety of additional factors when developing their policies, relating to the marketing of debit/prepaid/preloaded cards; the types, amounts, and method of disclosing fees that could be charged to cardholders; the number of on-campus ATMs at which fee-free withdrawals could be made; the extent to which cards could be co-branded (i.e., could include the logo or mascot of the student's school); and whether debit/prepaid/preloaded card contracts could include mandatory arbitration clauses.

SB 515 (Jackson) -- Failed passage in the Senate Banking and Financial Institutions Committee

Co-sponsored by the Center for Responsible Lending and California Reinvestment Coalition. Would have increased the minimum length of a deferred deposit transaction (payday loan) to 30 days per $100 borrowed; required deferred deposit licensees to underwrite deferred deposit transactions and offer installment plans to borrowers who could not afford to repay their deferred deposit transactions according to their original terms; capped the maximum number of deferred deposit transactions per customer at four per year; and required the Commissioner of DBO to develop and implement a payday loan database.

SB 526 (Calderon) -- Held on the Senate Appropriations Suspense File

Would have required the Commissioner of DBO to include information about the practices of unlicensed deferred deposit lenders lending in California via the Internet and summarize DBO's enforcement actions related to these lenders in its annual report. Would also have required the Commissioner to submit a report to the Legislature on or before January 1, 2015, with recommendations relating to enhancement of DBO's enforcement authority over unlicensed deferred deposit lenders, and for changes to law that would minimize adverse consumer experiences with unlicensed lenders.

SB 1280 (Hueso) -- Never taken up by the author in the Senate Judiciary Committee

Sponsored by the California Hispanic Chambers of Commerce. Would have required DBO to establish a licensing program for the provision of unsecured consumer loans. In developing this program, the Department would have had the authority to consider a significant number of topics, relating to loan sizes, interest rates and fees, underwriting, credit education, disclosures, reporting of borrower payment history to one or more major credit bureaus, the nature of required examinations, the nature or required reporting, and how the success of the program would be measured.

SB 1351 (Hill) – Never taken up by the author on the Senate Floor

Heard and passed twice by the Senate Banking and Financial Institutions Committee. The first time SB 1351 was heard by this Committee, the bill would have required payment card-issuing financial institutions, payment card-issuing retailers, and retailers that accept payment cards to migrate to so-called "chip and PIN" payment card technology, or to alternate technology generally accepted within the payments industry as being more secure than microchip technology at combatting card-present payment card fraud, by October 1, 2015. Small financial institutions (defined as those with assets of $5 billion or less), small retailers (defined as those with ten or fewer employees), and gas station pump payment terminals would have been given two extra years to comply -- until October 1, 2017. Would have sunset on January 1, 2020.

Because the bill was significantly amended on the Senate Floor after it passed the Committee, it was returned to the Committee pursuant to Senate Rule 29.10. The second time the bill was heard by this Committee, it applied to payment card-issuing financial institutions and to retailers

that accept payment cards, but not to payment card-issuing retailers. It lowered the compliance threshold for financial institutions to 75% (thus, 75% of the new or replacement payment cards issued by a financial institutions would have had to comply with the provisions of the bill by the implementation dates specified in the bill). Its implementation dates for large financial institutions and large retailers were delayed to April 1, 2016; implementation dates for smaller financial institutions, smaller retailers, and gas station pump payment terminals remained October 1, 2017. The bill also required migration to "chip" technology (not to "chip and PIN" or an alternative, more secure technology). The amended bill would have sunset on January 1, 2020.

SECURITIES LAW AND CORPORATE GOVERNANCE

BILLS SIGNED INTO LAW

AB 434 (Hagman), Chapter 38, Statutes of 2013

Sponsored by the Conference of California Bar Associations. A technical, clean-up measure intended to correct a drafting error in a 2011 bill sponsored by the Corporations Committee of the Business Law Section of the California State Bar (AB 571 (Hagman), Chapter 203, Statutes of 2011).

AB 457 (Torres), Chapter 109, Statutes of 2013

Sponsored by the Corporations Committee of the Business Law Section of the California State Bar. Eliminates the requirement that a corporation, which seeks written permission for a reorganization from fewer than 100% of its shareholders, wait at least ten days before consummating an approved reorganization.

AB 491 (Torres), Chapter 255, Statutes of 2013

Sponsored by the Corporations Committee of the Business Law Section of the California State Bar. Enacts a series of provisions intended to allow general corporations, nonprofit public benefit corporations, nonprofit mutual benefit corporations, and nonprofit religious corporations to take specified actions to conduct their ordinary business operations and affairs during emergencies, without incurring liability for those actions. Authorizes the aforementioned business entities to do any of the following in advance of or during an emergency, unless emergency bylaws provide otherwise: modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent resulting from the emergency; relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so; give notice of a meeting of the board to a director or directors in any practicable manner under the circumstances, when notice of a meeting of the board cannot be given to that director or directors in the manner ordinarily required; or deem that one or more officers of the corporation that are present at a board meeting is a director, as necessary to achieve a quorum for that meeting. Any of the aforementioned actions, if taken in good faith immediately prior to or during an emergency, bind the corporate entity, and may not be used to impose liability on a corporate director, officer, employee, or agent.

Also authorizes general corporations, nonprofit public benefit corporations, nonprofit mutual benefit corporations, and nonprofit religious corporations to include emergency bylaws within their regular bylaws, as long as those emergency bylaws do not conflict with the corporations' articles of incorporation.

AB 1255 (Pan), Chapter 538, Statutes of 2013

Sponsored by the Sacramento Natural Foods Cooperative. Authorizes a consumer cooperative corporation to do all of the following: provide for preferred memberships and/or non-voting

memberships in its articles of incorporation or bylaws; divide a membership class into one or more series; and authorize the board of directors to fix the rights, privileges, preferences, restrictions, and conditions attaching to any wholly unissued class or series of memberships. Also makes conforming changes to the laws governing consumer cooperative corporations.

SB 538 (Hill), Chapter 335, Statutes of 2013

Enacts several changes to securities laws administered by DBO. Among those changes: a) authorizes DBO to impose annual renewal fees of up to $35 on licensed broker-dealer agents and investment adviser representatives, and states legislative intent that the revenue generated from the imposition of these fees be used by DBO to perform regulatory examinations of its broker-dealer and investment adviser licensees at least once every four years, or more often, if deemed necessary for the protection of the public; b) expands the types of securities law violations for which DBO is authorized to issue desist and refrain (D&R) orders, by authorizing the issuance of D&Rs for any violation of the Corporate Securities Law of 1968 or any rule adopted or order issued pursuant to that division; c) updates the anti-fraud language in California's securities law to ensure consistency with federal anti-fraud language; d) authorizes the Commissioner of DBO to apply to a superior court for a judgment in the amount of an administrative penalty or ancillary relief granted pursuant to a final decision of the Commissioner, and provides that such application constitutes a sufficient showing to warrant the issuance of a judgment and order by a court, provided the Commissioner includes a certified copy of his or her final decision with his or her application; e) exempts certain California limited partnerships and limited liability companies from the requirement to file consents to service of process with DBO; f) amends the Commodities Law to provide that a request for hearing to dispute the issuance of a D&R must be made within 30 days of service of the order, rather than within one year of service of the order; and g) provides that if a person who is served with a D&R fails to file a written request for a hearing within 30 days from the date that D&R is served, the D&R is be deemed final.

SB 1301 (DeSaulnier), Chapter 694, Statutes of 2014

As heard and passed by the Committee, the bill renamed "flexible purpose corporations" as "socially responsible corporations," required a 2/3rds vote (rather than a majority vote) for an existing business association formed as a trust to become a socially responsible corporation, required (rather than allowed) the directors of a socially responsible corporation to consider the special purpose of the corporation when making their decisions, provided for dissenters' rights to shareholders of socially responsible corporations, and made technical and clarifying changes to correct and clarify the Flexible Purpose/Socially Responsible Corporation Law.

After it passed the Senate Banking and Financial Institutions Committee, the bill's substantive provisions were retained, but the bill was amended to rename these types of corporations "social purpose corporations." The bill was additionally amended to clarify that social purpose corporations must consider the financial interests of their shareholders and compliance with their legal obligations in addition to their social purpose, and to delete an exemption that had previously allowed flexible purpose corporations with fewer than 100 shareholders of record from the requirement to prepare a special purpose management discussion and analysis.

BILLS VETOED

None

BILLS ACTED UPON BY THE COMMITTEE, WHICH FAILED TO REACH THE GOVERNOR

Bills that were referred to the Senate Banking and Financial Institutions Committee, but which were never heard by the Committee, are not included in this list.

AB 713 (Wagner) – Held on the Senate Appropriations Committee Suspense File

Sponsored by the Corporations Committee of the Business Law Section of the California State Bar. Would have provided that any person who meets the definition of a finder, and who satisfies all of the conditions established for finders, is deemed to be a finder and not a broker-dealer. Would have defined a finder as a natural person who, for direct or indirect compensation, introduces or refers one or more accredited investors to an issuer or an issuer to one or more accredited investors, solely for the purpose of a potential offer or sale of securities of the issuer in an issuer transaction in California, and as someone who does not do any of the following: a) participate in negotiating any of the terms of the offer or sale of the securities; b) advise any party to the transaction regarding the value of the securities or the advisability of investing in, purchasing, or selling the securities; c) conduct any due diligence on the part of any party to the transaction; d) sell or offer for sale in connection with the issuer transaction any securities of the issuer that are owned, directly or indirectly, by the finder; e) receive, directly or indirectly, possession or custody of any funds in connection with the issuer transaction; f) knowingly receive compensation in connection with any offer or sale of securities, unless the sale is qualified by the Commissioner of DBO or the security or transaction is exempt or not otherwise subject to qualification; or g) disclose anything other than the name, address, and contact information of the issuer; the name, type, price, and aggregate amount of any securities being offered in the issuer transaction; and the issuer's industry, location, and years in business.

Concurrent with each introduction or referral of a potential investor to an issuer, would have required each finder to obtain the informed, written consent of the person introduced or referred, on an agreement whose content the bill would have specified.

AB 2096 (Muratsuchi) -- Held on the Senate Appropriations Committee Suspense File

Sponsored by Small Business California. Would have created a new way for a person seeking to offer or sell securities to qualify their offering, by authorizing the "qualification by notification" of offers or sales of securities advertised by means of general solicitation and general advertising. To be eligible for this type of qualification by notification, the offer or sale would have to have met all of the following criteria: the aggregate amount of securities sold to all investors by the issuer within any 12-month period could not have exceeded $1 million; the aggregate amount of securities sold to any non-accredited investor by the issuer, including any amount sold to that investor during the 12-month period immediately preceding the date of the transaction, could not have exceeded $5,000; the offering would have to have met the

requirements of federal Rule 504 of the Securities Act of 1933; the issuer would have to have filed with the Commissioner, provided to investors, and made available to potential investors a Small Company Offering Registration disclosure statement and specified financial documents (the nature of required documents would depend on the size of the offering); the issuer would have been required to set aside all funds raised as part of the offering in a third-party escrow account, until the minimum offering amount was reached, and return all funds to investors, if the minimum offering amount was not reached within one year following the effective date of the offering; and neither the issuer, a predecessor of the issuer, affiliate of the issuer, or a long list of persons with key roles in the issuer's management or direction could have been disqualified as bad actors pursuant to subdivision (d) of 17 CFR Section 230.506.

The bill was amended significantly after being heard in the Senate Banking and Financial Institutions Committee, but was subsequently re-amended back to the form in which it passed the Senate Banking and Financial Institutions Committee.

SB 121 (Evans) – Failed Passage in the Senate Banking and Financial Institutions Committee

Sponsored by CALPIRG. Would have required corporations that reasonably believed they had one or more shareholders who reside in California to notify their shareholders at least 24 hours before making political contributions or expenditures and to annually summarize and report to their shareholders on the political contributions and expenditures they made during the prior year. The notifications would have had to include a description of the political activities; the name of the person, candidate, committee, or political party, or a description of the political cause to which each contribution or expenditure was made; the aggregate amount of the contribution(s) or expenditure(s) for each candidate, ballot measure campaign, signature-gathering effort on behalf of a ballot measure, political party, or political action committee; the office sought by and the political party of any candidate for or against whom a contribution or expenditure was made; the title and summary of the ballot measure for or against which a contribution or expenditure was made; and a statement regarding whether the contribution or expenditure was made in support or in opposition.

A willful or reckless violation of the bill by a corporation would have created a civil cause of action for damages against the corporation, which would have to have been brought within two years following the alleged violation, and which could only have been brought by a shareholder of the corporation who held a share in the corporation at the time of the political contribution or expenditure. A prevailing shareholder would have been entitled to the information that was not reported or disclosed in compliance with the reporting requirements of the bill, plus reasonable attorney's fees and costs.

FINANCIAL SERVICES LAW ADMINISTRATION, MISCELLANEOUS

BILLS SIGNED INTO LAW

AB 129 (Dickinson), Chapter 74, Statutes of 2014

Deletes the Financial code section that prohibits a corporation, flexible purpose corporation, association, or individual from issuing or putting into circulation, as money, anything but the lawful money of the United States.

AB 279 (Dickinson), Chapter 228, Statutes of 2013

Co-sponsored by the California Independent Bankers and California Bankers Association. Expands the ways in which local governments may invest their surplus funds, by authorizing local agencies to invest up to 30 percent of their surplus funds in deposits at depository institutions that use a private sector entity to assist in the placement of those deposits. Prior to enactment of AB 279, California law authorized local governments to invest up to 30 percent of their surplus funds in certificates of deposit (CDs) at depository institutions that use a private sector entity to help place those deposits. AB 279 expands that authority beyond CDs to any type of deposit. However, the new (i.e., non-CD deposit) authority is only effective until January 1, 2017 and is limited; no local agency may invest more than 10 percent of its surplus funds in depository institutions that use the same non-CD placement service.

AB 786 (Dickinson), Chapter 533, Statutes of 2013

Makes numerous changes to the Money Transmission Act (MTA). Provides that the MTA does not apply to payroll processing firms; authorizes the Commissioner to exempt from all or part of the MTA any person or transaction or class of persons or transactions, if the Commissioner of the Department of Business Oversight (Commissioner of DBO; Commissioner) finds such action to be in the public interest and finds that the regulation of such persons or transactions is not necessary for the purposes of the MTA; reduces minimum net worth requirements for MTA applicants from tangible shareholder's equity of "no less than $500,000" to a level "between $250,000 and $500,000, as determined by the Commissioner;" authorizes the Commissioner to offer guidance to any prospective applicant for an MTA license regarding the conditions of licensure that may be applied to that person and to issue written decisions, opinion letters, and other formal written guidance to persons seeking clarification regarding the requirements of the MTA; revises the definition of an eligible security for purposes of the MTA to include any receivable owed by a bank and resulting from an automated clearinghouse or credit-funded transmission; and modifies the receipt requirements for money transmission that involves payment for goods or services.

AB 978 (Blumenfield), Chapter 139, Statutes of 2013

Requires DBO to ensure that banks and credit unions which maintain correspondent accounts or payable-through accounts are in compliance with the federal Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, associated federal regulations, and any related presidential Executive Orders. If the Commissioner discovers a violation, requires him or her to bring specified state enforcement actions and to forward evidence of the violation to the United States Department of the Treasury. Sunsets the bill if either of the following occur: Iran is removed from the United States Department of State's list of countries that have been determined to repeatedly provide support for acts of international terrorism; or the President determines and certifies to the appropriate committees of the United States Congress that Iran has ceased its efforts to design, develop, manufacture, or acquire a nuclear explosive device or related materials and technology.

AB 1282 (Bonta), Chapter 115, Statutes of 2013

Sponsored by the California Credit Union League. Modifies the formula used to calculate assessments paid annually by state-chartered credit unions to DBO by providing that the amount of the annual assessment on a state-chartered credit union is the greater of $2,000 or an amount derived via a complicated step formula. This step formula modifies the step formula in existing law by adding more asset tiers and applying lower weights to higher-dollar-value asset tiers. The net effect of these changes is to raise approximately the same amount of money, but to reduce the assessment burden on larger credit unions.

AB 1856 (Wilk), Chapter 305, Statutes of 2014

Sponsored by the Conference of California Bar Associations. Updates California's Bond and Undertaking Law to add bonds and notes of the United States or California and cashier's checks to the list of items of value that may be deposited with a court in lieu of a bond.

AB 2209 (Dickinson), Chapter 499, Statutes of 2014

Continues the process of updating the MTA that began with enactment of AB 786, summarized above. Makes changes intended to ensure that electronic commerce transactions are not regulated as money transmission and to reflect the increasing use of the Internet as a platform for the exchange of goods and services; amends the MTA to add a definition of "e-commerce;" provides that the MTA does not apply to a transaction in which the recipient of the money or other monetary value is an agent of a payee, and delivery of the money or other monetary value to the agent satisfies the payor's obligation to the payee; clarifies the Commissioner's authority to impose conditions on any authorization, approval, license, or order issued pursuant to the MTA; requires MTA licensees to report on the extent to which their money transmission volume reflects transactions conducted via mobile application or Internet website; adds to the definition of an eligible security any receivable owed by a bank and resulting from a debit-funded transmission; provides that if a customer's instructions to forward or transmit money are not complied with by a licensee, and the money has not yet been forwarded or transmitted by the licensee, a customer has a right to a refund of his or her money; specifies the information that

MTA licensees must include on the receipts they are required to provide to customers; clarifies that receipts may be provided electronically for transactions that are initiated electronically, or when a customer agrees to receive an electronic receipt; adds a requirement that MTA licensees maintain any records required by the Commissioner; clarifies the Commissioner's authority to offer guidance to prospective applicants; and adds a provision to the MTA providing that if, at any time, the Commissioner deems it necessary for the general welfare of the public, he or she may exercise any power set forth in the MTA with respect to a money transmission business, regardless of whether an application for a license has been filed with the Commissioner, a license has been issued, or, if issued, a license has been surrendered, suspended, or revoked

AB 2298 (Rodriguez), Chapter 214, Statutes of 2014

Sponsored by the California Credit Union League. Allows depository institutions that hold local agency deposits to submit their required weekly reports to DBO electronically (via facsimile or email) rather than only via postal mail.

AB 2742 (Committee on Banking and Finance), Chapter 64, Statutes of 2014

Technical clean-up measure. Corrects inaccurate code section references, updates outdated code section references, and clarifies unclear language in several of the laws administered by DBO and the Bureau of Real Estate Appraisers.

SB 139 (Hill), Chapter 45, Statutes of 2013

Deletes the January 1, 2014 sunset date on provisions of California law that regulate persons engaging in business as exchange facilitators (Financial Code Section 51000 et seq.).

SB 233 (Leno), Chapter 64, Statutes of 2013

Enacts the Fair Debt Buyers Practices Act, to regulate the activities of persons and entities that purchase delinquent or charged-off consumer debt. Prohibits a debt buyer from making any written statement to a debtor in an attempt to collect a consumer debt, unless the debt buyer is the sole owner of the debt or has authority to assert the rights of all owners of the debt, and unless the debt buyer provides the following in writing to the debtor: a) the debt balance at charge off and an explanation of the amount, nature, and reason for all post-charge off fees and charges imposed by the charge-off creditor or any subsequent purchasers of the debt; b) the date of default or the date of the last payment by the debtor; c) the name and an address of the charge-off creditor at the time of charge off, and the charge-off creditor's account number associated with the debt; d) the name and last known address of the debtor as they appeared in the charge-off creditor's records prior to the sale of the debt; and e) the names and addresses of all persons or entities that purchased the debt after charge off.

Prohibits a debt buyer from making any written statement to a debtor in an attempt to collect a consumer debt, unless it has access to a copy of the contract or other document evidencing the debtor's agreement to the debt. Prohibits a debt buyer from bringing suit or initiating an arbitration or other legal proceeding to collect a consumer debt if the applicable statute of

limitations on the debt buyer's claim has expired. Provide that no default or other judgment may be entered against a debtor, unless business records, authenticated through a sworn declaration, are submitted by the debt buyer to the court to establish the information that is alleged in the complaint, and unless a copy of the contract or other document evidencing the debtor's agreement to the debt, authenticated through a sworn declaration, has been submitted by the debt buyer to the court.

Provides for specified monetary damages to enforce its provisions, requires that any action brought to enforce the provisions of the bill be brought within one year from the date of the last alleged violation by the debt buyer, and provides that a debt buyer has no civil liability under the provisions of the bill if it shows, by a preponderance of the evidence, that its violation was not intentional, resulted from a bona fide error, and occurred notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

SB 537 (Committee on Banking and Financial Institutions), Chapter 334, Statutes of 2013

Makes technical and clarifying changes to several sections of the Financial Code and to provisions of the Franchise Investment Law administered by DBO. Within the Financial Code, corrects a heading reference, updates state law to reflect changes in minimum levels of federal deposit insurance limits, deletes references to obsolete code sections, corrects incorrect code section references, restores code section references that were inadvertently deleted by prior bills, and adds clarifying language and definitions. Within the Franchise Investment Law, standardizes the length of time in which franchisors have to deliver disclosure documents to prospective franchisees at 14 calendar days, and makes a clarifying change to standardize the nomenclature used to refer to franchise disclosure documents.

BILLS VETOED

None

BILLS ACTED UPON BY THE COMMITTEE, WHICH FAILED TO REACH THE GOVERNOR

Bills that were referred to the Senate Banking and Financial Institutions Committee, but which were never heard by the Committee, are not included in this list.

AB 385 (Dickinson) – Held on the Senate Appropriations Committee Suspense File

Would have housed the Bank on California Program within the Department of Business Oversight (DBO). Would have required DBO to do several things in connection with its new authority, including: requesting specified account information from participating financial institutions on a quarterly basis; reporting specified account information to the Legislature on an annual basis; identifying geographic localities with high densities of unbanked individuals and households and working with local leaders to establish Bank On programs in those areas; and providing support to local Bank On programs. Would have required financial institutions opting to participate in the Bank on California Program to do several things, including: offering low- or

no-cost checking accounts with no monthly minimum balance requirements; allowing customers with negative banking histories to open accounts; accepting consular identity cards and other alternative forms of identification; waiving one set of nonsufficient funds or overdraft fees per program participant per year; reporting specified data to DBO; training branch staff on program policies and procedures; and promoting the program to low-income communities.

2013– 2014 INFORMATIONAL HEARINGS

Agendas, background papers, and videos of the hearings summarized below are available on the Committee's Internet Web site.

October 1, 2013: The Homeowner Bill of Rights (SB 900/AB 278): An Implementation Update

The Senate Banking and Financial Institutions Committee held its first informational hearing of the 2013-14 Legislative Session on Tuesday, October 1st, 2013 in the Rancho Santiago Community College District Building in Santa Ana, California. The hearing was designed to provide the Committee and other interested members of the public with a status update on two very significant pieces of legislation enacted during July, 2012 (SB 900 and AB 278), which collectively have become known as the Homeowner Bill of Rights (HBOR).

SB 900 and AB 278 enacted comprehensive mortgage servicing reforms, implemented several new borrower protections, and modified California's nonjudicial foreclosure process. Supporters of SB 900 and AB 278 believed that the bills would cut through the red tape with which borrowers had been struggling for years and help borrowers work constructively with their servicers to explore options for avoiding foreclosure. SB 900 and AB 278 were supposed to end the dual-track process, ensure that borrowers were assigned servicer personnel knowledgeable about their situations, require servicers to provide borrowers with written determinations on their loan modification applications, and give borrowers a chance to temporarily stop the foreclosure process if servicers failed to comply with the new rules.

Opponents of the bills believed they would reward strategic defaulters, delay the nonjudicial foreclosure process, lead to frivolous litigation, complicate servicers' compliance efforts, and increase servicers' compliance costs.

The October 1st hearing sought testimony from borrower advocates, servicers, attorneys, regulators, and economists to see whether either prediction came true and get an initial sense for how the bills are working so far.

Testimony was very comprehensive. Several topics were raised by multiple witnesses. These topics include:

- Assembling A Complete Mortgage Loan Modification Application: Housing advocates and others who work with consumers expressed frustration at the lack of uniformity in what constitutes a complete mortgage loan modification application. Requirements differ from servicer to servicer, and sometimes from borrower to borrower when the same servicer is involved. Servicers were criticized by multiple witnesses for lack of clarity in their written communications with borrowers regarding what documents or portions of documents are necessary to complete an incomplete loan modification application. Letters informing borrowers that more or different information is needed lack the detail necessary for borrowers and their advocates to understand what, exactly, is missing or

incomplete.

On the flip side, servicers are frustrated at the delays they encounter in obtaining what they view as simple paperwork from borrowers, and at the tendency among some borrowers to wait until very late in the foreclosure process to submit complete loan modification application packages. Anti dual-tracking provisions in HBOR require servicers to halt the foreclosure process once they receive a complete loan modification application, which causes delays in the nonjudicial foreclosure process.

- Documenting A Material Change in A Borrower's Financial Circumstances: Borrower advocates and servicers expressed confusion over the provisions of SB 900 and AB 278 that allow borrowers who have been denied a loan modification the opportunity to reapply for a modification, if they experience a material change in their financial circumstances. Neither borrowers, borrower advocates, nor servicers know what constitutes a "material change." Some borrowers are reapplying for loan modifications without having experienced any change in their circumstances; some are re-applying and claiming a material change, without submitting paperwork documenting that change; and some servicers are delaying the foreclosure process to re-evaluate borrowers who re-submit paperwork, without knowing whether the borrower's change in circumstances is sufficiently "material" to warrant the re-evaluation (though opting to perform the re-evaluation in order to minimize litigation risk).

- Transfers of Servicing Rights: Several large mortgage servicers have recently sold the servicing rights to a significant number of mortgages. Nationstar and Ocwen are among the purchasers of these servicing rights, as are several smaller servicers that were not named by hearing witnesses. These transfers of servicing rights have created problems for borrowers. For example, the smaller servicers that are purchasing servicing rights often lack advocacy portals such as those employed by larger servicers for use by housing counselors and other borrower advocates to escalate problems. When servicing rights are transferred before a written loan modification agreement is reached between a servicer and a borrower, borrowers must often re-start the loan modification application process from the very beginning with their new servicer. Even when written loan modification agreements have been reached prior to transfers of servicing rights, there can be delays in transferring the paperwork surrounding those agreements. Paperwork regarding loan modifications and other forms of loss mitigation may not be transferred along with the servicing rights, or there may be a significant time delay between transfer of servicing rights and transfer of paperwork.

- Litigation Risk Under HBOR: Although the bills had only been operative for nine months as of the date of the hearing, witnesses were aware of several lawsuits that had been filed against servicers, alleging HBOR violations, and of several demand letters that had been sent to servicers, threatening HBOR litigation, if money was not paid to the plaintiff's attorney to prevent a lawsuit. As of the date of the hearing, several borrowers had obtained temporary restraining orders and preliminary injunctions delaying foreclosure sales. Some courts had awarded plaintiffs attorneys' fees and costs at these stages; other courts had not. Some courts required borrowers to post bonds in order to go

to trial; others did not. None of the witnesses was aware of any court proceeding that had been decided, beyond the preliminary injunction stage. Some foreclosing beneficiaries had voluntarily rescinded foreclosure sales, after having been made aware of HBOR violations that occurred prior to the foreclosure.

November 14, 2013: Unsecured Lending By Depository Institutions, Nonprofits, and the Unlicensed

During the last six years, the availability of credit within California has shrunk, a phenomenon which has affected all populations, but which has been felt most acutely by Californians who lack credit scores, have very thin credit files, or have damaged credit. The California Legislature has spent considerable time in recent years discussing two of the borrowing options available to this population – namely, payday loans and installment loans offered by nondepository institutions. However, the Legislature has not previously focused on the types of unsecured loans which are made available by banks and credit unions to their customers, nor on the types of loans being offered by nonprofit organizations in California.

On November 14, 2013, the Senate Banking and Financial Institutions Committee examined those heretofore unexplored subjects during an informational hearing in Sacramento. The first half of the hearing was designed to learn what types of loan products are available from depository institutions and nonprofits in California, what underwriting standards are used to vet loan applicants, what loan terms are imposed, and what loss rates characterize these loans; the Committee also asked witnesses to identify any provisions of state law, which act as barriers to either depositories or nonprofits, in their efforts to offer loans to the populations they serve.

During the second half of the hearing, the Committee focused on another source of credit that is available to borrowers seeking loans to help meet their spending needs: loans offered in California by lenders that lack California lending licenses. Although they are often referred to as unlicensed to reflect their lack of *California* lending licenses, some of these lenders are, in fact licensed – in other states. Others have entered into agreements with Indian tribes and assert that the tribes' sovereign immunity relieves the lenders of any need to obtain California lending licenses. Still other unlicensed lenders operate offshore, outside the reach of California's laws. Some of the lenders operating in California without California lending licenses have joined with licensed lenders to form a trade organization, the Online Lending Alliance (OLA). During the hearing, a representative of OLA addressed the Committee to discuss changes it is seeking, at both the state and federal levels, to provide its members with additional legal certainty surrounding their activities. The Committee also heard from California's primary lending regulator, the Department of Business Oversight, regarding actions it has taken to reduce the prevalence of lending into California by entities that lack California lending licenses.

Because of the wide variety of topics covered during the hearing, no common themes among witnesses emerged, as was the case during the October 2013 HBOR hearing summarized above. However, testimony from one of the witnesses (Jose Quinones, CEO of the Mission Asset Fund), led to the introduction and subsequent enactment of SB 896 (Correa), summarized earlier in this legislative summary.

February 24, 2014: Beyond the Breach: Protecting Consumers' Personal Information in the Retail Environment

On February 25, 2014, on the heels of major retail data breaches at Target and Neiman-Marcus, the California Senate Banking and Financial Institutions Committee and California Senate Judiciary Committee jointly convened an informational hearing in Sacramento titled, "Beyond the Breach: Protecting Consumers' Personal Information in the Retail Environment."
The joint hearing took a hard look at retail electronic payment systems and gave members of the Committees and other interested parties an opportunity to ask experts from across the industry about efforts to combat fraud, prevent data breaches, and keep sensitive personal and financial information safe.

The task of safeguarding consumers' personal and financial information has become a multi-billion dollar industry populated by thousands of participants, each with a slightly different role in a vast and extremely complex payment network. Reflecting the complexity of the topic, the Committees heard testimony from twenty invited witnesses, representing virtually every segment of the payment landscape, including consumer and privacy rights advocates, state and federal law enforcement agencies, depository institutions, retailers, payment card networks, point-of-sale hardware manufacturers, payment processors, and security consultants.

Major questions that were addressed during the hearing included:

- What, exactly, is meant by the terms "card fraud," "data breach," and "identity theft?" How do these topics differ, and how are they related?

- How does existing state and federal law protect consumers whose personal information has been breached? How does the law protect consumers who have become victims of card fraud or identity theft? Should the State of California add to or expand on these laws?

- How does a retail transaction involving a payment card actually work? What parties have access to a cardholder's personal and financial information? What rules must they follow to secure that information?

- What new technologies are on the horizon to better protect consumers' personal and financial information? What are the strengths and weaknesses of those technologies? Who will pay to implement those technologies? Who, besides consumers, will benefit from them?

- Which participants in the payment network pay for fraud when it occurs? Which entities pay when a data breach occurs? How does cost allocation differ in face-to-face ("card-present") and remote ("card-not-present") transactions? Does the existing cost allocation structure make sense, or should it be changed?

- Which participants in the payment network are responsible for notifying consumers when their personal or financial information may have been compromised due to a data breach? Should this duty to notify rest with other/additional participants?

- Are the data breach notices currently sent to customers useful? Should additional information be provided to consumers whose personal or financial information may have been compromised due to a breach?

- Finally, and most important: Are consumers' safe when they use a payment card to purchase goods or services? What can we do to make them safer, and how much will it cost?

Persons interested in witness testimony are directed to the hearing agenda and to a video of the hearing, both of which are available on the Committee's web site under the Hearings tab.

May 2, 2014: The Homeowner Bill of Rights (SB 900/AB 278): An Implementation Update

On May 2, 2014, the California Senate Banking and Financial Institutions Committee convened its second informational to solicit input from interested parties regarding the successes and failures of AB 278 and SB 900 to date. The first hearing was held in Southern California in October 2013, nine months after the bills became operative. The May 2014 hearing was held in Northern California, in the Santa Rosa City Council Chambers, fifteen months after the bills became operative, and thus provided the Committee with an additional six months' worth of data. Taken together, the two hearings offered a comprehensive picture of the impacts of the two bills.

During the May 2014 hearing an economist, a representative of the California Attorney General's Office, California's chief lending regulator, borrower advocates, and servicers discussed all of the following questions:

- How, if at all, has HBOR impacted the number of foreclosure starts in California? The number of foreclosure sales? Were those impacts temporary or longer-term?

- How, if at all, has HBOR impacted the length of time to nonjudicially foreclose in California? Was that impact temporary or longer-term?

- Has HBOR had other impacts on the California housing market?

- Do borrowers know about their additional rights under HBOR?

- Are borrowers having an easier time communicating constructively with their mortgage servicers since enactment of HBOR? If so, what types of problems have largely gone away since HBOR? If not, what types of problems are continuing?

- Are most servicers aware of HBOR and their responsibilities under it?

- Do servicers clearly understand their responsibilities under HBOR?

- Is HBOR implementation uniform across servicers, or are some servicers doing a better job than others in complying with HBOR?

- Are California regulators, including the AG, bringing actions against servicers for violations of HBOR?

- Are borrowers utilizing the private right of action authorized under HBOR? If so, how have these suits been decided?

- Are third party purchasers who place the highest bid on properties at trustee sales (i.e., foreclosure auctions) being sued by borrowers alleging HBOR violations? If so, how are these suits being decided?

- Are changes to HBOR necessary to achieve its original intent?

Testimony during the second hearing addressed many of the same topics that were discussed during the first HBOR hearing, but witnesses at the second hearing did identify two issues not previously raised. Consumer advocates, in particular, are concerned about ways in which surviving family members are being treated by servicers, when a borrower with a delinquent mortgage loan passes away. These advocates expressed frustration at the survivors' inability to obtain information about the mortgage loan from servicers, and about servicers' decisions to move forward with the foreclosure process following the death of a borrower.

Questions were also raised about the extent to which borrowers are entitled to a single point of contact. Some read HBOR as requiring servicers to assign a single point of contact to every delinquent borrower who requests a foreclosure prevention alternative; others interpret the bills as requiring borrowers to explicitly request a single point of contact, in order to receive one.