

Calif. Banking Brief: All The Notable Legal Updates In Q3

By **Stuart Richter and Eric Hail** (October 4, 2024)

In this Expert Analysis series, attorneys provide quarterly recaps discussing the biggest developments in California banking regulation and policymaking.

California has been at the forefront of efforts to enhance regulation in the banking and financial services business. This trend continued through the third quarter of 2024.

California's recent legislative enactments purport to add additional safeguards for consumers by policing, and, in some cases, prohibiting banks and credit unions from charging certain purported hidden or so-called junk fees.

Additionally, the California Department of Financial Protection and Innovation, or DFPI, remained active by initiating enforcement actions focused on cryptocurrency assets and student loan debt relief.

A.B. 2017 and S.B. 1075 — California Joins the War on Junk Fees

In recent years, the Consumer Financial Protection Bureau and other federal regulators have taken the lead on challenging overdraft and nonsufficient funds, or NSF, fees. For example, in January, the CFPB issued its proposed rule to prohibit overdraft fees for large financial institutions.[1]

California has followed suit. California state-chartered banks and credit unions are required to report to the DFPI annually the revenue generated from nonsufficient funds and overdrafts during the calendar year.[2] Many state-chartered banks and credit unions reported substantial overdraft revenue, with some banks reporting revenue from overdraft fees in the millions of dollars.[3]

In February, on the heels of the CFPB's issuance of a proposed overdraft fee rule, California Attorney General Rob Bonta issued a press release to "encourage" California-chartered banks and credit unions to review policies and practices regarding charging surprise overdraft fees and returned item fees and asserted that charging such fees "likely" constitutes an unfair business practice under California's Unfair Competition Law and the federal Consumer Financial Protection Act.[4]

On Sept. 24, Gov. Gavin Newsom signed A.B. 2017 and S.B. 1075 into law, which address unfair banking practices.[5]

A.B. 2017 prohibits certain banks and credit unions from charging NSF fees.[6] S.B. 1075 sets limits on the amount credit unions can charge for overdraft fees and requires that state-chartered credit unions provide a customer at least five business days before requiring payment of a fee to give the customer an opportunity to repay the amount that triggered the fee.[7]



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According to Newsom, "[t]hese bills aim to protect lower-income Californians that are disproportionately impacted by financial fees that can push them deeper into financial hardship."[8]

California's legislation closely tracks the CFPB's proposed overdraft fee rule. After the CFPB's proposed rule was announced, the American Bankers Association and 52 state bankers' associations submitted comments to the proposed rule, challenging the constitutionality of the rule and questioning whether, if implemented, the proposal would result in any true benefit to consumers if adopted as proposed.[9]

It remains to be seen if California's law will generate a similar industry response or legal challenge.

DFPI Brings Enforcement Actions Against Student Loan Debt Relief Companies

The DFPI has brought several enforcement actions against student debt relief companies since its creation. The DFPI's latest round of enforcement actions shows a continued focus on aggressively pursuing "predatory debt relief scams" by student loan debt relief companies.

On Sept. 17, the DFPI announced enforcement actions against three debt relief servicing companies for violations of the California Consumer Financial Protection Law, or CCFPL, and the federal Telemarketing Sales Rule.

Specifically, The Firm Alternative LLC (dba DocupPrep Xpress), Total Rain Inc. (dba Student Aid Group) and Financial Enhancement Services Inc. were ordered to desist and refrain from engaging in purported unlawful student loan debt relief practices, including soliciting and collecting advance fees prior to providing student loan debt relief services.[10]

Each of these companies advertised to consumers that they would assist in obtaining student loan debt relief by providing financial advisory and loan consolidation services. Each of the programs required customers to enter into agreements and make at least one payment installment, ranging from \$166 to \$999, prior to the provision of any student loan modification or forgiveness services.

The DFPI's Continued Focus on Cryptocurrency Assets

The DFPI has also been active in the crypto industry and has sought to build out a framework for regulating it.

According to the DFPI, in 2023, there was a "70 percent increase in CCFPL-related consumer complaints" filed, and the top two CCFPL-related complaints involved crypto assets (41%) and debt collectors (36%).[11]

Likewise, of the investigations and enforcement actions by the DFPI, the majority were related to crypto-assets; specifically, 525 investigations and 132 actions were related to purported crypto scams.[12]

Nearly a year ago, Newsom signed into law the Digital Financial Assets Law, which was designed to protect California consumers and the market from risky crypto-asset business practices.

The law, which takes effect in 2025, requires the DFPI to regulate crypto kiosks by limiting

the amount of money or crypto-assets a person can withdraw from a kiosk, requiring a written disclosure prior to a transaction, capping transaction fees, receipts with specific information, and the DFPI to post a public list of kiosk locations.[13]

The Alliance for Fair Access to Cryptocurrency Terminals sued the DFPI, alleging that the \$1,000 per-customer, per-day crypto kiosk withdrawal limit in the Digital Financial Assets Law was unreasonable and exceeded the Legislature's authority.[14]

On Aug. 30, the Los Angeles County Superior Court issued its final judgment dismissing the suit, finding that the cap on daily transactions at crypto kiosks was a reasonable method for limiting fraud.[15]

DFPI Commissioner Clothilde Hewlett commented that "the law's common-sense restrictions, including a \$1,000 daily limit at crypto kiosks, protect consumers from fraudulent transactions and limit the use of kiosks for illicit purposes. The Department will continue implementing this important legislation, which will strengthen responsible innovation in the state's crypto industry and protect Californians." [16]

Additionally, on June 26, the DFPI entered into a consent order with Silvergate, a bank holding company, for allegedly making misleading statements about the bank's compliance program related to its crypto-asset exchange network.[17]

Since 2014, Silvergate's primary business line was servicing foreign and domestic digital financial asset companies, such as cryptocurrency exchanges. To facilitate these operations, the bank launched an internal payments platform that allowed customers to participate in its crypto-asset exchange network.

According to the consent order, which was made in parallel with actions taken by the Federal Reserve Board and the U.S. Securities and Exchange Commission, an investigation by the DFPI identified deficiencies with respect to Silvergate's monitoring of internal transactions.

In June, the bank agreed to pay a civil money penalty of \$43 million, in addition to a payment of \$20 million as a department penalty, bringing the bank's penalty package total to \$63 million.[18]

Looking Ahead

As California legislators and the DFPI continue to implement reforms in banking and financial services, California banks, credit unions and fintech companies should continue to monitor the developments and assess the impact of recent legislation and enforcement actions on current programs, policies, and procedures to ensure compliance.

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[1] See Law360, CFPB Overdraft Rule Could Mean Big Shift In Banking Biz (Feb. 16, 2024) <https://www.law360.com/articles/1795343/cfpb-overdraft-rule-could-mean-big-shift->

in-banking-biz.

[2] Cal. Fin. Code § 521.

[3] See Dep't of Fin. Prot. & Innovation, Annual Report of Income from Fees on Nonsufficient Funds and Overdraft Charges (April 2024), https://dfpi.ca.gov/wp-content/uploads/sites/337/2024/08/Annual-Report-of-Income-from-Fees-on-Nonsufficient-Funds-and-Overdraft-Charges_2024.pdf.

[4] Office of the Attorney General Rob Bonta, Surprise Overdraft Fees and Returned Deposited Item Fees (Feb. 20, 2024) <https://oag.ca.gov/system/files/attachments/press-docs/Blanket%20CA%20Banks%20and%20Credit%20Unions%20re%20Overdraft%20Fees%20%281%29.pdf>.

[5] Governor Newsom signs consumer protection bills targeting medical debt, overdraft fees, and unfair subscription practices (Sept. 24, 2024)

[6] CA A.B. 2017 (2024) (enacted). <https://www.gov.ca.gov/2024/09/24/governor-newsom-signs-consumer-protection-bills-targeting-medical-debt-overdraft-fees-and-unfair-subscription-practices/>.

[7] CA S.B. 1075 (2024) (enacted).

[8] See supra note 7.

[9] Letter to The Honorable Rohit Chopra, Overdraft Lending: Very Large Financial Institutions, 89 Fed. Reg. 13,852 (Feb. 23, 2024), Docket No. CFPB–2024–0002; RIN 3170–AA42 (April 1, 2024) <https://aboutblaw.com/bd>.

[10] DFPI, DFPI Announces Enforcement Actions Against Student Loan Debt Relief Companies, Secures Consumer Refunds and Penalties (Sept. 17, 2024) <https://dfpi.ca.gov/2024/09/17/dfpi-announces-enforcement-actions-against-student-loan-debt-relief-companies/>.

[11] DFPI, DFPI Reports Expanded Enforcement, Awareness Under CA Consumer Financial Protection Law (April 25, 2024) <https://dfpi.ca.gov/2024/04/25/dfpi-reports-expanded-enforcement-awareness-under-ca-consumer-financial-protection-law/>.

[12] DFPI, DFPI Reports Expanded Enforcement, Awareness Under CA Consumer Financial Protection Law (April 25, 2024) <https://dfpi.ca.gov/2024/04/25/dfpi-reports-expanded-enforcement-awareness-under-ca-consumer-financial-protection-law/>.

[13] CA S.B. 401 (2023) (enacted).

[14] DFPI, Court Upholds Daily Transaction Limit for Crypto Kiosks (September 4, 2024) <https://dfpi.ca.gov/2024/09/04/court-upholds-daily-transaction-limit-for-crypto-kiosks/>.

[15] Id.

[16] Id.

[17] DFPI, Silvergate to Pay \$63 Million in Combined Penalties Following Coordinated Investigations by DFPI, Federal Partners (July 1, 2024) <https://dfpi.ca.gov/wp->

content/uploads/sites/337/2024/06/Consent-Order-Silvergate-Bank.pdf.

[18] Id.