



LOS ANGELES COUNTY
**CONSUMER &
BUSINESS AFFAIRS**

2021 Legislation Covering Debt Collectors

DCBA
Presentation:

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New Legislation: Summary

	Assembly Bill 1864	Senate Bill 908	Final rule Debt Collection Practices (Regulation F)
Passed by:	California Department of Financial Protection and Innovation (DFPI)	DFPI	Consumer Financial Protection Bureau (CFPB)
Summary:	<p>Changes name of Department of Business Oversight to DFPI</p> <p>Introduces the California Consumer Financial Protection Law (CCFPL), giving the DFPI additional regulatory powers over businesses providing consumer financial services.</p>	<p>Adds the Debt Collection Licensing Act (DCLA)</p> <p>Amends Rosenthal Fair Debt Collection Practices Act to require debt collectors to provide their license numbers in communications with consumers</p>	Adds to Fair Debt Collection Practices Act (FDCPA)
Laws Amended or Added:	<p>Civil Code Sections 300, 320, 321, 326, 351.</p> <p>California Financial Code Sections 9000 – 90019</p>	<p>California Civil Code Sections 1788.11 and 1788.52</p> <p>Financial Code Sections 100000 - 100022</p>	Federal Code of Regulations Sections 1006.1 - 1006.108
Effective Date:	1/1/21	1/1/21 (License requirement effective	11/30/21

Assembly Bill 1864: Summary

1	Effective 1/1/21, renames the Department of Business Oversight (DBO) to the California Department of Financial Protection and Innovation (DFPI).
2	<p>Enacts the California Consumer Financial Protection Law (Financial Code Sections 9000 – 90019), which:</p> <ul style="list-style-type: none">• Expands list of businesses regulated by the DFPI to include many consumer financial products• Gives the DFPI greater enforcement powers over licensed businesses, with a goal of punishing bad actors and protecting consumers• Allows the DFPI to set registration requirements such as mandatory background checks and registration with the Nationwide Multistate Licensing System & Registry (NMLS)• Establishes the Financial Technology Innovation Office for the purpose of monitoring businesses who provide consumer financial services and developing initiatives to promote innovation, competition and consumer access.

Businesses Overseen by the DFPI

(1)	banks or trust companies or the banking or trust business;
(2)	savings associations or the savings association business;
(3)	credit unions or the credit union business;
(4)	persons who engage in the business of receiving money for transmission or such business;
(5)	issuers of stored value or such business;
(6)	issuers of payment instruments or the payment instrument business;
(7)	business and industrial development corporations or the business and industrial development corporation business;
(8)	insurance premium finance agencies or the insurance premium finance business;

(9)	persons offering or making any contract constituting bucketing;
(10)	persons offering or selling off-exchange commodities;
(11)	deferred deposit originators;
(12)	finance lenders and brokers;
(13)	residential mortgage lenders and servicers;
(14)	capital access companies;
(15)	check sellers, bill payers, and proraters;
(16)	securities issuers, broker-dealers, agents, investment advisers, and investment adviser representatives;
(17)	mortgage loan originators employed or supervised by finance lenders or residential mortgage lenders;
(18)	escrow agents;
(19)	franchisors;
(20)	persons holding securities as custodians on behalf of securities owners;
(21)	persons offering or providing consumer financial products or services in this state; and
(22)	PACE program administrators.

**Source: California Financial Code Section 300 (b)
(As amended by AB1864)**

What is a “Financial Product or service?”

1	Extending credit and servicing extensions of credit , including acquiring, purchasing, selling, brokering extensions of credit, other than solely extending commercial credit to a person who originates consumer credit transactions.	6	Providing check cashing, check collection, or check guaranty services .
2	Extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements .	7	Providing payments or other financial data processing products or services to a consumer by any technological means , including processing or storing financial or banking data for any payment instrument, or through any payment system or networks used for processing payment data, including payments made through an online banking system or mobile telecommunications network (with some exceptions)
3	Providing real estate settlement services .		
4	Engaging in deposit-taking activities, transmitting or exchanging funds , or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer.		
5	Selling, providing, or issuing stored value or payment instruments (except that, in the case of a sale of, or transaction to reload, stored value provided to the consumer, only if the seller exercises substantial control over the terms or conditions of the stored value)		

What is a “Financial Product or service?”

Cont’d

8 Providing **financial advisory services** other than services relating to securities provided by a person regulated by the Securities Exchange Commission or a person regulated by a state securities commission, but only to the extent that such person acts in a regulated capacity, to consumers on individual financial matters or relating to proprietary financial products or services ... including both of the following:

(A) Providing **credit counseling** to any consumer.

(B) Providing services to assist a consumer with **debt management** or **debt settlement, modifying the terms of any extension of credit,** or **avoiding foreclosure.**

9 Collecting, analyzing, maintaining, or providing **consumer report information** or **other account information**, including information relating to the **credit history of consumers**, used or expected to be **used in connection with any decision** regarding the **offering or provision** of a **consumer financial product or service** (with some exceptions)

10 **Collecting debt** related to any consumer financial product or service.

11 **Directly or indirectly brokering** the **offer or sale** of a **franchise** in this state on behalf of another.

12 Offering another financial product or service as **may be defined** by the department, by regulation, for purposes of this division, **if the department finds that the financial product or service is either:**

(A) Entered into or conducted **as a subterfuge** or with a purpose **to evade any consumer financial law.**

(B) **Permissible for a bank** or for a **financial holding company** to offer or to provide **under any provision of law or regulation applicable to a bank or a financial holding company**, and has, or likely will have, **a material impact on consumers** (with some exceptions)

Prohibited Acts under AB1864

It is unlawful for covered persons or service providers to:

- Engage in any **unlawful, unfair, deceptive, or abusive acts or practices** with respect to **consumer financial products or services**.
- Offer or provide any financial product or service not in conformity with any consumer financial law
- Fail or refuse to, as required by a consumer financial law or any rule or order issued by the DFPI:
 - Allow DFPI access or copying of records
 - Establish or maintain records.
 - Make reports to the department
- Terminate or discriminate against any covered employee who refuses to engage in activity they believe is unlawful.

**Source: California Financial Code Sections 90003, 90004
(As added by AB1864)**

Definition: Abusive, Unfair and Deceptive Practices

In order for the DFPI to declare an act or practice abusive, the act/practice must either:

- 1 **Materially interfere** with the ability of a consumer to **understand** a **term or condition** of a consumer financial product or service; or
- 2 Take advantage of either:
 - A **lack of understanding** on the part of the consumer of the **material risks, costs, or conditions** of the product or service.
 - The **inability** of the consumer to **protect their interests** in selecting or using a consumer financial product or service.
 - The **reasonable reliance** by the consumer on a covered person to **act in the interests** of the consumer.

Definitions of “unfair” and “deceptive” are consistent with the definitions in **CA Business and Professions Code § 17200**

The term “abusive” shall be interpreted consistent with Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. Sec. 5481). Any inconsistency shall be resolved in favor of greater protections to the consumer and more expansive coverage.

**Source: California Financial Code Section 90009
(As added by AB1864)**

Enforcement Powers Granted by the CCFPL

- DFPI has **investigatory** and **subpoena** powers, and may require that covered persons/businesses:

- Produce documentary material for inspection and copying
- File written reports or answers to questions

DFPI may conduct **hearings** and **adjudications** proceedings to ensure or enforce compliance

- May prescribe **rules** regarding **registration requirements**, including:
 - Requiring that filings be made under oath
 - Setting and charging registration fees.
 - Requiring that applicants register through the Nationwide Multistate Licensing System and Registry

California Financial Code Section 90006 (b)
(As added by AB1864)

- DFPI may issue **cease and desist orders** to **covered persons** and **businesses** whose actions are **believed to violate the CCFPL**
 - If the covered person/business does not respond in 30 days with a request for a hearing, this order will be deemed a final order of the commissioner
 - After notice and an opportunity for hearing, DFPI may suspend or revoke license of the covered person/business.
- DFPI may bring **administrative** and **civil actions**, and to prosecute those civil actions before **state** and **federal courts**.

Options for Relief

The DFPI is able to demand the following actions as relief for consumers affected by persons/businesses who violate the CCFPL

1	Rescission/reformation of contracts.	7	Limits on the activities or functions of the person.
2	Refund of moneys or return of real property.	8	Monetary penalties A. For "violations", (\$5,000 for each day a violation is ongoing, or \$2,500 per violation (whichever is greater) B. B. For "wreckless violations" - \$25,000 each day a violation is ongoing, or \$10,000 (whichever is greater) C. For any "knowing violation" - 1 percent of the person's total assets, \$1,000,000 for each day a violation is ongoing, or \$25,000 per violation (whichever is lesser)
3	Restitution.		
4	Disgorgement or compensation for unjust enrichment, with any disgorged amounts returned to the affected consumers, to the extent practicable.		
5	Payment of damages or other monetary relief.		
6	Public notification regarding the violation, including the costs of notification.		

The Financial Technology Innovation Office and Financial Protection Fund

Financial Technology Innovation Office

- Allows the DFPI to:
 - Investigate, research, analyze, and report on markets for consumer financial products or services.
 - Develop and implement outreach and education programs to underserved consumers and communities.
 - Develop and implement initiatives to promote innovation, competition, and consumer access within financial services.

**California Financial Code Section 90006 (d)
(As added by AB1864)**

Financial Protection Fund

- Allows the DFPI to:
 - Set and collect an annual registration fee from each entity required to register
 - Require that the cost of every inspection and examination of covered person be paid by the covered person and allows the DFPI to bring a court action to recover those costs.
 - Use money obtained from the enforcement of any of the laws administered by the commissioner, including moneys received through fines, penalties, settlements, judgements, or otherwise, for the administration of the CCFPL.

**California Financial Code Section 90007 (a)
(As added by AB1864)**

Reporting Requirements

- DFPI's ability to set increased registration requirements becomes inoperative on 1/1/26 unless the CA Legislature extends the requirement or incorporates it into new or existing law.
- Each year, the DFPI Commissioner shall publish an annual report on their website detailing the DFPI's actions during the prior year under the CCFPL.

- The DFPI Commissioner must also make annual reports to the CA Legislature describing activities completed in the prior year and those planned in the upcoming year, with regards to:
 - (1) All enforcement actions taken to implement the CCFPL
 - (2) Business models in use among covered persons that it studied
 - (3) All regulations it proposed, or finalized, or on which it sought public feedback
 - (4) All activities of the Office of Financial Technology Innovation
 - (5) Actions taken as part of DFPI's ability to investigate, research, analyze, and report on markets for consumer financial products or services.
 - (6) A review of all outreach efforts to underserved consumers and communities
 - (7) Any other topic deemed relevant by the commissioner or requested to be covered by a chair of the appropriate committee of the Legislature.

What is new under Senate Bill 908?

1	Under Senate Bill 908 debt collectors and debt buyers would need to register for a license with the Department of Financial Protection and Innovation (DFPI).	Financial Code Section 10001, as added by SB908
2	Amends Rosenthal Fair Debt Collection Practices Act to require that debt collectors provide their license numbers in all written and digital communication. Debt collectors also must provide their license number in any communication by telephone at the consumer's request.	Civil Code Section 1788.11(f), as amended by SB908
3	Requires that licensed debt collectors have a \$25,000 surety bond on file.	Financial Code Section 10019 as added by SB908
4	Requires that applicants undergo background checks with the CA Department of Justice	Financial Code Section 10008 as added by SB908
5	This bill would authorize the commissioner to use the authority to issue orders and claims for relief in connection with a violation of the Rosenthal Fair Debt Collection Practices Act or provisions regulating debt buyers, by insured depository institutions and persons who are licensed and regulated pursuant to various provisions of law, including the California Financing Law, the California Residential Mortgage Lending Act, and the Real Estate Law, as specified.	

Debt Collector Licensing Requirements

Who is required to be licensed as a debt collector?

- 1 Persons/businesses located in CA and seeking to collect from a debtor that resides inside or outside the state
- 2 Persons/Businesses located outside CA and seeking to collect from a debtor that resides in CA

Source: Financial Code Section 100001, as amended by SB 908

Deadline for License Application

- 1 A person engaged in the business of debt collection in California must be licensed by **Jan. 1, 2022** to continue operating in the state.
- 2 Starting September 1, 2021, application became available through the Nationwide Licensing System website.
- 3 Debt collectors who submit an application **by Dec. 31, 2021** may continue to operate in California pending the denial or approval of their application.
- 4 Applicants who apply after December 31, 2021 will need to wait for their application to be processed and approved in order to continue operation.

Debt Collector Licensing Requirements, Cont'd

- A license is only required for the business principal place of business and not required for each individual branch.
- Applicants must pay an application fee of \$350.00 and an investigation fee at \$150.00 which are both non-refundable
- Applicants are required to undergo background check with the CA Attorney General.

SB 908 – Debt Collector Licensing Act

Reasons the DFPI may deny Debt Collector License applications

- 1 False statements of fact made in application
- 2 Applicants are found to have been convicted of a crime or committed any relevant act involving dishonesty, fraud, or deceit in the last 10 years
- 3 An applicant has been held liable by judgment in a civil action under the Rosenthal Fair Debt Collection Practices Act in the last 7 years
- 4 The DFPI commissioner may adopt regulations specifying factors in denying a license, including the harm to the consumer, the frequency of prior violations, and the number of prior disciplinary actions taken against the licensee in California or in other states

Source: Financial Code Section 100012(B), as added by SB 908

SB908: DFPI's Regulatory Powers over Debt Collectors

1 Issue or refuse to issue licenses

2 Revoke or suspend licenses following a hearing

3 subpoena documents and witnesses, administer oaths and require production of documents

4 Accept and investigate complaints against licensees

5 Perform background checks in order to determine the "experience, background, honesty, truthfulness, integrity, and competency of an applicant" and any officers, directors or managers of a corporation or other entity.

6 To levy fees, fines and charges

7 Issue cease and desist orders to unlicensed businesses

8 Following a hearing, order licensed and unlicensed businesses to pay relief, including refunds, restitution, disgorgement and payment of damages on behalf of injured parties

9 Require that applications be made through the Nationwide Multistate Licensing System & Registry

Changes for DCBA Counselors

If a consumer calls into DCBA and has an issue with a debt collector (or other covered business):

- Speak with the consumer to determine the name of the business, the type of services provided, and the nature of their allegations
- Search for the business on the DFPI or NMLS website and confirm whether the business is registered as a debt collector
- Inform consumers that DFPI is the licensing agency for debt collectors and complaint will need to be filed with DFPI.
- DCBA will **no longer** accept complaints against **debt collectors**, but we can still provide information about their rights under the FDCPA/Rosenthal Act and refer them to mediation or small claims.

Final rule

Debt Collection Practices (Regulation F)

- Adds to the Fair Debt Collection Practices Act (FDCPA)
- Defines specific number of times a debt collector may call within a specific time.
- Defines procedures by which a debt collector may contact consumers via **text message, email and social media**
- Defines “Limited Content Messages,” – rules for leaving a voicemail without violating the FDCPA.
- Includes requirements for debt collectors collecting debts from deceased debtors.

Telephone calls

Prohibits debt collectors from placing telephone calls:	
1	More than seven times within seven consecutive days, or
2	Within seven consecutive days after a debt collector has had a telephone conversation with a debtor.
Federal Code of Regulations Section 1006.14(b)(2)(i)	

“Limited-Content Messages”

Summary

- Identifies what information a debt collector must and may include in a voicemail message for consumers (with the inclusion of no other information permitted) for the message to be deemed not to be a communication under the FDCPA
- To be a “limited-content message,” the voicemail message cannot contain any other information.
- Messages other than voicemail messages, such as text messages, are not limited-content messages.

Federal Code of Regulations Section § 1006.2(j)

Must Include

- A business name that does not indicate the caller is a debt collector
- Telephone number(s) you can use to return the call
- A request that you reply and the name(s) of who you can contact to reply

May Include

- A salutation
- The date and time of the message
- Suggested dates and times for you to reply
- That you may speak to any of the company’s representatives

Email Communications

Procedures for communication via Email		
Email address obtained by the debt collector:	Consumer must have contacted the debt collector by email or provided prior consent, and has not since opted out.	Federal Code of Regulations Section 1006.6(d)(4)(i)
E-mail address obtained by original creditor:	The original creditor must have given written or electronic notice to the consumer that the debt will be sold and the debt collector might use the email address to contact them. The notice must have provided instructions for opting out.	Federal Code of Regulations Section 1006.6(d)(4)(ii)
E-mail address obtained from prior debt collector:	The consumer must have used the email address to communicate with the previous debt collector or provided consent to be contacted at that email address and did not opt out of communication to that address.	Federal Code of Regulations Section 1006.6(d)(4)(iii)

Text Message Communications

A debt collector may contact a consumer by text if:

- 1 The consumer contacted the debt collector by text within the last 60 days and did not opt out; or
- 2 The consumer provided prior consent to be contacted by text within the last 60 days and did not withdraw their consent.

If the consumer did not provide their consent or send a text message to the debt collector within the last 60 days (and has not opted out of text message communication since), the debt collector must use a “complete and accurate database” to confirm that the number has not been reassigned to another consumer.

Federal Code of Regulations Section 1006.6(d)(5)

Additional Communication requirements

Communications by Social Media

- Debt collectors may not contact consumers through social media if the communication can be seen by the public or the consumer's social media contacts. They must also identify themselves as a debt collector and include an easy way to opt out of future communications from them on that social media platform.

Federal Code of Regulations Section 1006.22(f)(1)

Requirement for opt-out notice

All attempts by a debt collector to contact a consumer via email address, telephone number for text messages, or other electronic-medium address must include a clear and conspicuous statement describing the method by which a consumer can opt out of communication at that address.

Federal Code of Regulations Section 1006.6(e)

Additional Communication requirements

Use of Assumed Names

- A debt collector's employee may use an assumed name when communicating or attempting to communicate with you as long as the employee uses the assumed name consistently and the debt collector can readily identify the employee who used the assumed name.

Federal Code of Regulations Section 1006.22(f)(1)

Requirements for Record Retention

- Starting on the date that the debt collector begins collection activity on a debt until three years after the debt collector's last collection activity on the debt, a debt collector must retain records related to their attempts to collect.
- If a debt collector records telephone calls made in connection with the collection of a debt, the debt collector must retain the recording of each such telephone call for three years after the date of the call.

Federal Code of Regulations Section 1006.22(f)(1)

New Term – “Duplicative Disputes”

Term	Duplicative Dispute
Definition	<p>A dispute submitted by the consumer in writing within the validation period that:</p> <ul style="list-style-type: none">• Is substantially the same as a dispute previously submitted by the consumer in writing within the validation period for which the debt collector already has satisfied the requirements of paragraph (d)(2)(i) of this section; and• Does not include new and material information to support the dispute.
	<p>In response to a duplicative dispute, a debt collector may</p> <ul style="list-style-type: none">• Notify the consumer in writing or electronically that the dispute is duplicative, provide a brief statement of the reasons for the determination, and refers the consumer to the debt collector’s response to the earlier dispute; or• Provide validation of the debt
Federal Code of Regulations Section 1006.38	

Requirement for Translated Disclosures

Translated Disclosures

- The required disclosure of a debt collector in its initial communication with a consumer that the debt collector is attempting to collect a debt must be made in the same language or languages used for the rest of the communication in which the debt collector conveyed the disclosures. Any translation of the disclosures a debt collector uses must be complete and accurate.
- NOTE: This requirement is present in the Rosenthal Act (Civil Code § 1788.52)

Federal Code of Regulations Section 1006.18 (e) (4)

§ 1006.34 Notice for Validation of Debts

Communications with debtors must include the following

Debt collector communication disclosure

Information about the debt

Information about consumer protections

Consumer-response information

Information about the debt

- The debt collector's name and the mailing address at which the debt collector accepts disputes and requests for original-creditor information.
- The consumer's name and mailing address.
- If the debt collector is collecting a debt related to a consumer financial product or service, the name of the creditor to whom the debt was owed on the itemization date.
- The account number, if any, associated with the debt on the itemization date, or a truncated version of that number.
- The name of the creditor to whom the debt currently is owed.
- The itemization date.
- The amount of the debt on the itemization date.
- An itemization of the current amount of the debt reflecting interest, fees, payments, and credits since the itemization date.
- The current amount of the debt.

§ 1006.34 Notice for Validation of Debts

Communications with debtors must include the following

Debt collector communication disclosure

Information about the debt

Information about consumer protections

Consumer-response information

Information about consumer protections

- The date that the debt collector will consider the end date of the validation period and the following statements:
 - The consumer may send a written dispute to the debt collector, and they will cease collection until the debtor sends verification of the debt.
 - The consumer may submit a written request for original creditor name/address and the debt collector will cease collection until the debtor sends that info.
 - Unless the consumer contacts the debt collector to dispute the validity of the debt, or any portion of the debt, on or before that date, the debt collector will assume that the debt is valid.
 - (If debt related to a consumer financial product)
A statement that informs the consumer that additional information regarding consumer protections in debt collection is available on the CFPB website
 - (If notice sent electronically) explaining how a consumer can dispute the debt or request original-creditor information electronically

§ 1006.34 Notice for Validation of Debts

Communications with debtors must include the following

Debt collector communication disclosure

Information about the debt

Information about consumer protections

Consumer-response information

Consumer-response information

- Debt collectors must provide the following prompts (or similar prompts) to the consumer. If provided on the validation notice, this must be located at the bottom of the notice under the headings

“How do you want to respond?” and
“Check all that apply:”:

- Dispute Prompts
 - “I want to dispute the debt because I think:”;
 - “This is not my debt.”;
 - “The amount is wrong.”; and
 - “Other (please describe on reverse or attach additional information).”
- Original-creditor information prompt
 - “I want you to send me the name and address of the original creditor.”,
- Mailing addresses for the consumer and the debt collector

North South Group
P.O. Box 123456
Pasadena, CA 91111-2222
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.example.com

To: Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

Reference: 584-345

North South Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2017, you owed:	\$	2,234.56
Between January 2, 2017 and today:		
You were charged this amount in interest:	+ \$	75.00
You were charged this amount in fees:	+ \$	25.00
You paid or were credited this amount toward the debt:	- \$	50.00
Total amount of the debt now:	\$	2,284.56

How can you dispute the debt?

- **Call or write to us by August 28, 2020, to dispute all or part of the debt.** If you do not, we will assume that our information is correct.
- **If you write to us by August 28, 2020,** we must stop collection on any amount you dispute until we send you information that shows you owe the debt. You may use the form below or write to us without the form. You may also include supporting documents. We accept disputes electronically at www.example.com/dispute.

What else can you do?

- **Write to ask for the name and address of the original creditor, if different from the current creditor.** If you write by August 28, 2020, we must stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at www.example.com/request.
- **Go to www.cfpb.gov/debt-collection to learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you.
- Contact us about your payment options.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

Notice: See reverse side for important information.



Mail this form to:
North South Group
P.O. Box 123456
Pasadena, CA 91111-2222

Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

How do you want to respond?

Check all that apply:

- I want to dispute the debt because I think:**
 - This is not my debt.
 - The amount is wrong.
 - Other (please describe on reverse or attach additional information).
- I want you to send me the name and address of the original creditor.**

I enclosed this amount: \$

Make your check payable to *North South Group*. Include the reference number 584-345.

- Quiero este formulario en español.**

Additional Resources

- California Department of Financial Protection and Innovation
 - (916) 327-7585
 - 2101 Arena Boulevard
Sacramento, CA 95834
 - DFPI.CA.gov
- Consumer Financial Protection Bureau
 - (855) 411-2372
 - PO Box 27170
Washington, DC 20038
 - www.consumerfinance.gov
- County of Los Angeles Department of Consumer and Business Affairs
 - (213) 974-1452
 - 320 West Temple St. Room G-10
Los Angeles, CA 90012
 - www.dcba.lacounty.gov

Questions?

