Regulatory Alert

California's Mandatory Diversity Reporting For VC Fund Managers

The California Fair Investment Practices by Venture Capital Companies Law ("California Diversity Disclosure Law") was signed into law effective April 1, 2026, under the Department of Financial Protection and Innovation ("DFPI").

IN SUMMARY, THE CALIFORNIA DIVERSITY DISCLOSURE LAW REQUIRES:

- Venture capital companies (this term can also capture growth equity and certain private equity funds with early growth stage investment strategies, and potentially corporate strategic investors "Covered Entity");
- With a potential "nexus" to California (broad definition - not only including the location of the adviser and/or portfolio company, but also any California resident or entity solicited to be an investor in those companies);
- To register on the DFPI's website and pay a $175 registration fee **beginning March 1, 2026** (at time of this Client Alert the website is not operational);
- If the Covered Entity meets the criteria above, a survey will need to be distributed to all the "founders" of each portfolio company in which the covered entity made investments in and obtains "management rights" during 2025. The survey, which is voluntary, but must be distributed to each founder and requests information such as gender identity, ethnicity, disability status, LGBTQ status, veteran/disabled-veteran status, and California residency;
- By **April 1, 2026,** the survey information must be tallied, with the option of being aggregated, and then submitted to the DFPI's website. The intent of the California Diversity Disclosure Law is to calculate and disclose the percentage of investments made to Covered Entities managed by diverse founders as a percentage of total such investments made over a calendar year. Information is anonymized; and
- There is a fine of $5000 per day for non-compliance. At this time, it is expected the DFPI will notify such non-compliant entities and provide a 60-day cure period prior to assessing the fine. Covered Entities will need to complete the survey and make a submission each calendar year thereafter.

FURTHER DETAIL BELOW

Optima is available to discuss the California Diversity Disclosure Law requirements with advisers and assist with fulfilling the requirements of this new law. Please contact Shannon.Horton@Optima-Partners.com or Anna.Povinelli@Optima-Partners.com.

DOES YOUR FUND MEET THE CRITERIA THAT WILL REQUIRE COMPLIANCE WITH THE CALIFORNIA DIVERSITY DICLOSURE LAW?

Beginning March 1, 2026, a venture capital company (as defined in below) that is in the business of venture capital investment (as defined in below) and has a nexus to California (together. a "Covered Entity"), must submit contact information to the DFPI via their website, VCC Reporting Program - DFPI. Optima are available to discuss the California Diversity Disclosure Law requirements with advisers and assist with fulfilling the requirements of this new law.

A Covered Entity must then identify all investments made to a venture capital company during 2025, provide a standardized Venture Capital Demographic Data Survey VCC Demographic Data Survey ("**Survey**") to each founding team member (as defined in (**D**) below) for voluntary completion. The voluntary Survey is used to collect anonymized demographic information of businesses the Covered Entity invested in during the prior calendar year.

By April 1, 2026, and annually thereafter, a qualifying Covered Entity must submit a Demographic Data Report CA VCC Report summarizing the information received from the founding team members of such venture businesses that received funding from the Covered Entity in the prior calendar year. The Report must include anonymized and aggregated demographic data from the survey responses voluntarily returned by founding team members. The aggregation will calculate the percentage of venture capital companies invested in that are founded by diverse demographic founders by the total investments made in venture capital companies by the Covered Entity over the course of a calendar year. Each Covered Entity's Report will be publicly available on the DFPI website.

A. WHO IS CONSIDERED A VENTURE CAPITAL COMPANY COVERED ENTITY?

Pursuant to California Code of Regulations, title 10, section 260.204.9, subdivision (a)(4):

"Venture capital company" means an entity that satisfies one or more of the conditions below:

- *On at least one occasion during the annual period commencing with the date of its initial capitalization, and on at least one occasion during each annual period thereafter, at least fifty 50% of its assets (other than short-term investments pending long-term commitment or distribution to investors), valued at cost, are venture capital investments, as defined in subsection (a)(5) of this rule, or derivative investments, as defined in subsection (a)(6) of this rule; or*

- *The entity is a "venture capital fund" as defined in rule 203(l)-1 adopted by the SEC; or*

- *The entity is a "venture capital operating company" as defined in rule 2510.3-101(d) adopted by the U.S. DOL under ERISA.*

If the entity does <u>not</u> meet the criteria above, then the entity is **not** a Covered Entity and registration is <u>not</u> required.

If the Covered Entity meets one of the definitions above, then it must also meet both of the following:

- Primarily engages in the "business of investing in, or providing financing to, startup, early-stage, or emerging growth companies," **and**

- Meets a nexus to California under the California Diversity Disclosure Law provisions.

B. WHAT IS A VENTURE CAPITAL INVESTMENT:

A "venture capital investment" is defined as:

- *An acquisition of securities in an operating company as to which the investment adviser, the entity advised by the investment adviser or an affiliated person of either has or obtains "management rights," i.e., the right, obtained contractually or through ownership of securities, either through one person alone or in conjunction with one or more persons acting together or through an affiliated person, to substantially participate in, to substantially influence the conduct of or to provide (or to offer to provide) significant guidance and counsel concerning the management, operations or business objectives of the operating company in which the venture capital investment is made.*

C. THE VENTURE CAPITAL COMPANY HAS A NEXUS IN CALIFORNIA IF IT MEETS ANY OF THE FOLLOWING CRITERIA:

- *The VCC is headquartered in California.*
- *The VCC has a significant presence or operational office in California.*
- *The VCC makes venture capital investments in businesses that are in, or have significant operations in, California.*
- *The VCC solicits or receives investments from a person who is a resident of California.*

If none of the above apply, the Covered Entity does NOT need to register.

D. FOUNDING TEAM MEMBERS

A "founding team member" is a person who either:

- *Owned initial shares or similar ownership interests of the business; contributed to the concept of, research for, development of, or work performed by, the business before initial shares were issued; and was not a passive investor in the business; or has been designated as the chief executive officer or president.*

A "diverse founding team member" means:

- *A founding team member who self-identifies as a woman, nonbinary, Black, African American, Hispanic, Latino/Latina, Asian, Pacific Islander, Native American, Native Hawaiian, Alaskan Native, disabled, veteran or disabled veteran, lesbian, gay, bisexual, transgender or queer.*

A founding team is "primarily founded by diverse team members" if more than half the founding team members who responded to the survey and at least one of the founding team members are diverse founding team members.

E. BOOKS AND RECORDS must be maintained for five (5) years.

F. REQUIRED WRITTEN DISCLOSURES: The Covered Entity must disclose to all participants that (i) that completion of the Survey was voluntary;(ii) the Covered Entity did not encourage, incentivize, or otherwise influence responses; and (iii) no adverse action will be taken against the founding team member if they decline to participate in the survey.

G. PENALTIES FOR NON-COMPLIANCE are hefty, $5000 per day. The DFPI will provide notification of non-compliance and a 60-day window to cure non-filing.