



Commissioner's Report on the Offer or Sale of Securities by Permit
under Corporations Code Section 25113 for 2019



DFPI

DEPARTMENT OF FINANCIAL
PROTECTION & INNOVATION

December 2020

Introduction

Under California law, only securities that are qualified by the Department of Financial Protection and Innovation (DFPI) or exempt from qualification may be offered or sold in this state.¹ To qualify a security, application documents must be submitted to the DFPI for review before money may be raised from investors. Securities that are exempt under state law need not be qualified by the DFPI provided that issuers adhere to the rules which apply to the exemption under which they are operating.²

To increase real estate investor protections and provide greater transparency over the activities of issuers who solicit real estate investments, the DFPI has issued a yearly summary of securities since 2013 qualified by permit and pursuant to Corporations Code section 25113, subdivision (b).³ This report summarizes data for the previous calendar year and contains the following information:

- The general categories of investments for which permits were approved.
- The experience and net worth requirements imposed on issuers or sponsors.
- The total amount of money sought to be raised per category.
- Enforcement actions taken against permit holders.
- Any other information deemed relevant.

¹ See the Corporate Securities Law of 1968 (Corp. Code, § 25000 *et seq.*; Cal. Code Regs., tit. 10, § 260.140 *et seq.*).

² *Id.*

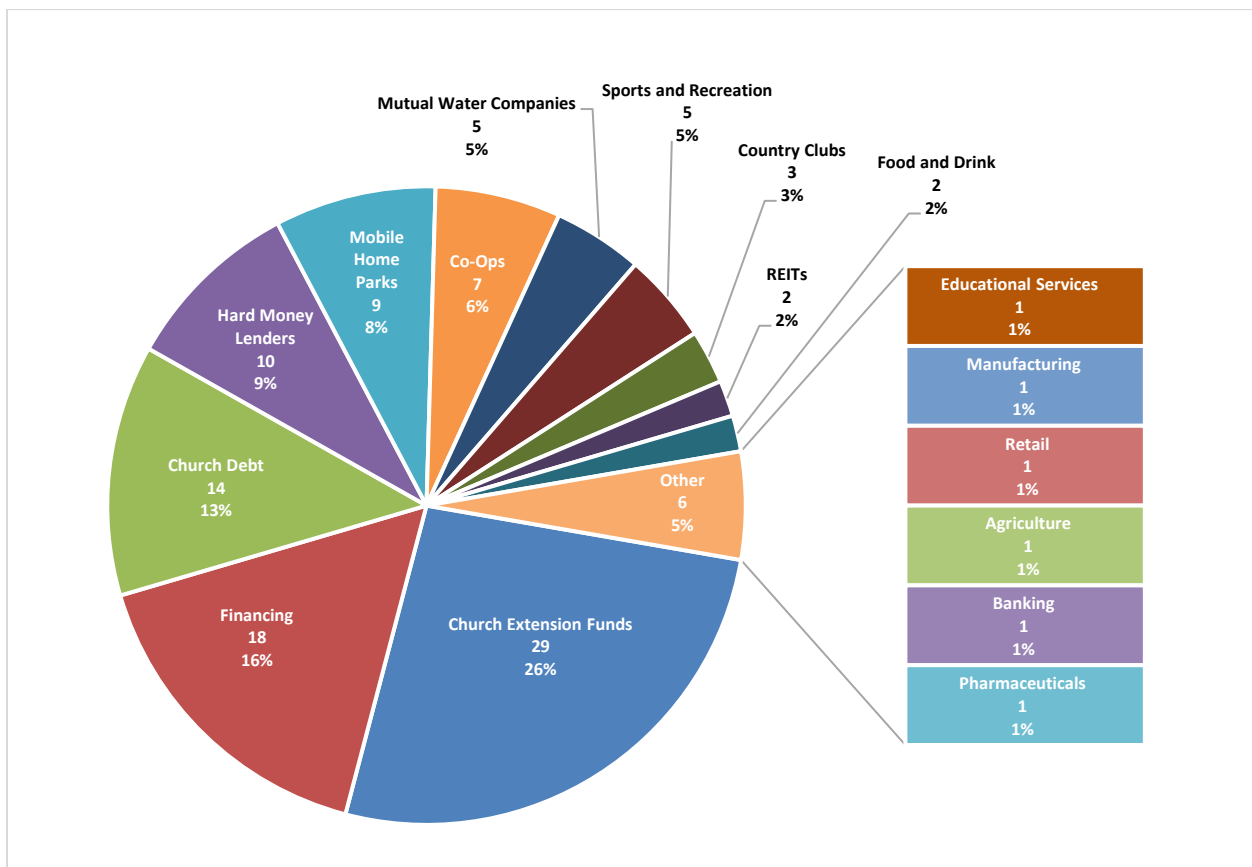
³ SB 879 (Vargas and Price); Corp. Code, § 25113, subd. (d).

2019 Summary

General Categories of Investment

In 2019, the DFPI issued 110 permits under Corporations Code section 25113 in the following categories of investment: agriculture, banking, church debt, church extension funds, cooperatives,⁴ country clubs, educational services, financing,⁵ food and drink, hard money lenders,⁶ manufacturing, mobile home parks, mutual water companies, pharmaceuticals, real estate investment trusts (REITs), retail, and sports and recreation.

Permits Issued by Category



⁴ Cooperatives include hardware retailers, grocers, and professional services providers.

⁵ Financing includes non-profit 501(c)(3) and for-profit companies financing through debt.

⁶ Hard money lenders include mortgage pools and fractional interest investments.

Investor Suitability Standards

To better protect consumers and foster trust in the market, the DFPI has broad discretion to set standards for the offer and sale of securities.⁷ The DFPI may require investors to meet specific qualifications related to experience, level of financial responsibility, tax status, or any other criteria the DFPI deems necessary.⁸ These “investor suitability” standards are imposed as needed and depend upon the securities issued. As reflected in the table below, both the least stringent and most stringent standards varied by category of investment in 2019. For some investment categories, the suitability standard imposed was limited to California residents.⁹ In most cases, however, the DFPI restricted the offer and sale of the securities to persons having a minimum gross income and minimum net worth or limited the percent of net worth a person could invest.

Category of Investment	Least Stringent Standard	Most Stringent Standard
Agricultural	Farmers / Producers	Farmers / Producers
Banking	Employees only	Employees only
Church Debt	None (open qualification)	\$250K or \$70K/\$70K + 10% NW cap
Church Extension Fund	Church members or affiliates	Church members or affiliates
Cooperative	Current members	\$150K or \$50K/\$75K + 10% NW cap
Country Club	\$65K/\$250K	\$200K/\$1M
Educational Services	\$75K or \$50K/\$50K	\$75K or \$50K/\$50K
Financing	None (open qualification)	\$200K/\$1M + 10% NW cap
Food and Drink	None (open qualification)	\$75K or \$50K/\$50K + 10% NW cap
Hard Money Lender	\$500K or \$65K/\$250K	\$500K or \$65K/\$250K + 10% NW cap
Manufacturing	Employees only	Employees only
Mobile Home Parks	Residents of the park	Mobile home members
Mutual Water Companies	Appurtenant to the land	Appurtenant to the land
Pharmaceuticals	Employees only	Employees only
REITs	\$250K or \$75K/\$75K + 10% NW cap	\$250K or \$75K/\$75K + 10% NW cap
Retail	Employees only	Employees only
Sports and Recreation	\$75K or \$50K/\$50K + 10% NW cap	\$500K or \$65K/\$250K + 10% NW cap

⁷ See Corp. Code, § 25000 *et seq.*; Cal. Code Regs., tit. 10, § 260.140 *et seq.*

⁸ Cal. Code Regs., tit. 10, § 260.140.01.

⁹ Cal. Code Regs., tit. 10, § 260.001, subd. (e).

Standards for Issuers or Sponsors

Experience Requirements

The securities permit application requires the issuer to explain the applicant's business experience. The DFPI evaluates the issuer's explanation along with other information provided in the application. There is no experience requirement that applies to all issuers. However, regulations promulgated by the DFPI set experience standards for issuers or sponsors in a real estate program¹⁰ and oil and gas offerings.¹¹

In a real estate program, the general partner of the sponsor must have at least two years of real estate experience or other experience relevant to acquiring and managing the types of properties sought by the program.¹² Additionally, any affiliate providing service to the program must have no less than four years of experience or otherwise demonstrate knowledge and experience to render the proposed services.¹³

In an oil and gas offering, the general partner or its chief operating officers must have at least three years of relevant oil and gas experience needed to successfully manage operations.¹⁴ Additionally, the general partner or any affiliate providing services to the program must have at least four years of relevant experience in the services being rendered or otherwise demonstrate sufficient knowledge and experience to perform the proposed services.¹⁵

Net Worth Requirements

Corporations Code section 25113, subdivision (d), mandates that the DFPI report on the "minimum, maximum, and average net worth required of those persons to whom permits are issued for each category." The DFPI, however, generally does not require specific net worth or minimum capital requirements for the issuer or sponsor unless required to do so by rule. As such, regulations governing REITs,¹⁶ real estate programs,¹⁷ and oil and gas interests¹⁸ specify net worth requirements.

¹⁰ Cal. Code Regs., tit. 10, § 260.140.111.1.

¹¹ Cal. Code Regs., tit. 10, § 260.140.122.1.

¹² Cal. Code Regs., tit. 10, § 260.140.111.1.

¹³ *Id.*

¹⁴ Cal. Code Regs., tit. 10, § 260.140.122.1.

¹⁵ *Id.*

¹⁶ Cal. Code Regs., tit. 10, § 260.140.91.

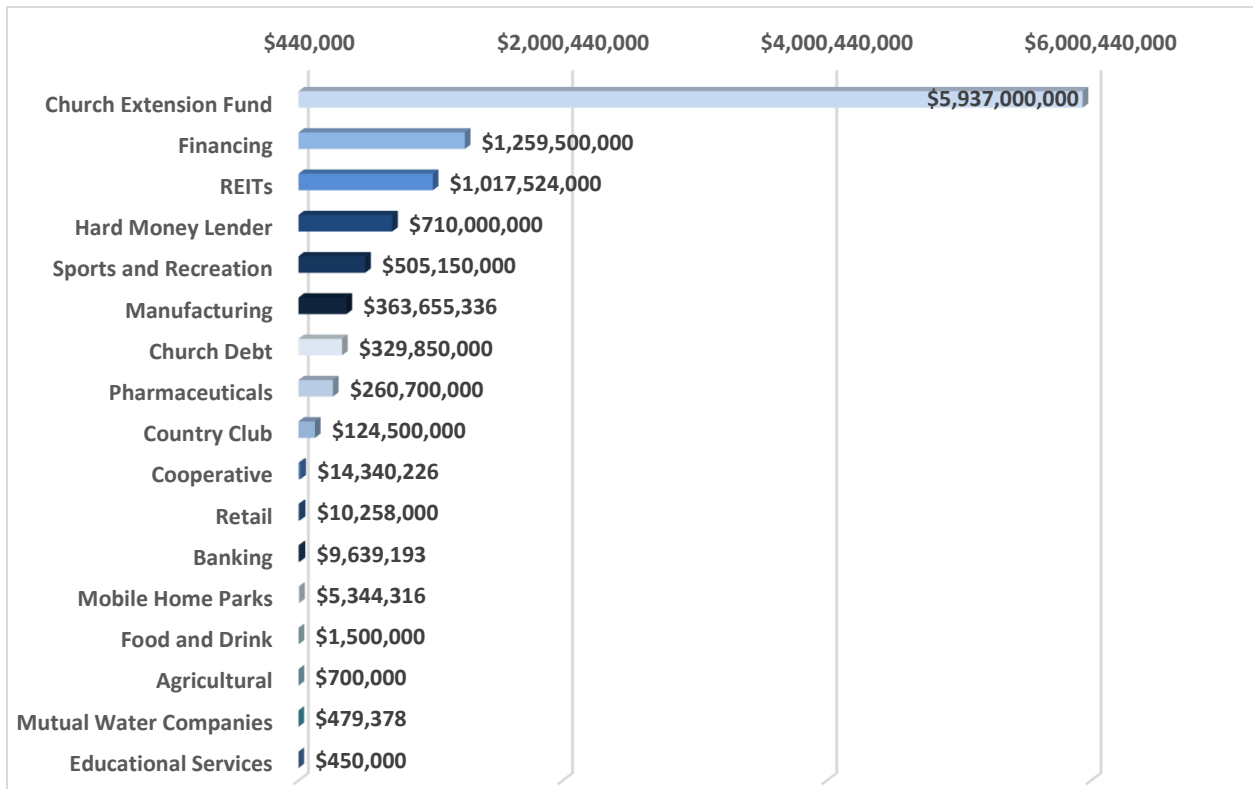
¹⁷ Cal. Code Regs., tit. 10, § 260.111.2.

¹⁸ Cal. Code Regs., tit. 10, § 260.140.122.2.

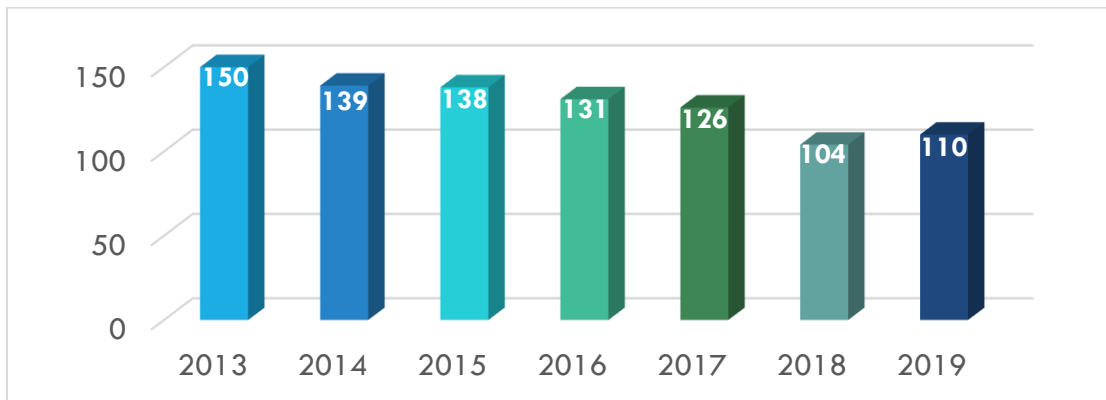
Issuer Standards

Category of Investment	Minimum Net Worth	Maximum Net Worth	Average Net Worth
Agricultural	\$23,980,843	\$23,980,843	\$23,980,843
Banking	\$29,939,525	\$29,939,525	\$29,939,525
Church Debt	\$508,279	\$17,393,937	\$5,839,933
Church Extension Fund	\$2,068,442	\$246,847,006	\$53,333,305
Cooperative	(\$1,833,303)	\$567,800,000	\$128,812,219
Country Club	(\$3,677,375)	\$48,139,093	\$14,191,241
Educational Services	(\$97,060)	(\$97,060)	(\$97,060)
Financing	\$183,925	\$159,901,414	\$36,655,046
Food and Drink	(\$41,670)	\$451,608	\$204,969
Hard Money Lender	\$254,036	\$26,323,269	\$7,207,864
Manufacturing	\$1,302,507,000	\$1,302,507,000	\$1,302,507,000
Mobile Home Parks	(\$915,737)	\$22,936,202	\$6,710,730
Mutual Water Companies	\$87,290	\$28,397,752	\$7,108,235
Pharmaceuticals	\$36,861,000,000	\$36,861,000,000	\$36,861,000,000
REITs	\$63,447,056	\$103,092,769	\$83,269,913
Retail	\$17,093,000,000	\$17,093,000,000	\$17,093,000,000
Sports and Recreation	(\$15,805,981)	\$82,286,000	\$9,585,778

Total Amount Sought to be Raised by Category



Yearly Trends



In 2019, the number of permits issued under Corporations Code section 25113 increased by six percent from the prior year but declined 27 percent over the past seven years.

Enforcement Actions

In 2019, the DFPI had 19 enforcement actions against permit holders in violation of Corporations Code section 25401.¹⁹

¹⁹ This number does not reflect any actions the DFPI took against issuers offering unqualified securities in violation of Corporations Code section 25110.