

## Emerging Companies & Venture Capital Investment Management

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### **New Mandatory VC California Diversity Reporting: Act Now on 2026 Deadlines**

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With the first compliance deadline now less than one month away, venture capital, growth equity, and other asset managers should act immediately to assess whether they are subject to California's new diversity reporting requirements for venture capital companies — even if they are **not** based in California.

#### Key Takeaways and Action Items

- **Action required now:** Fund managers should promptly determine whether any of their funds qualify as “covered entities” under California’s new diversity reporting law, the [Fair Investment Practices Venture Capital Companies Act](#) (“FIPVCC”), as the first registration deadline is less than one month away. Despite the statute’s name, while the FIPVCC primarily focuses on **venture capital funds** and other vehicles that meet the California regulatory definition of “venture capital company,” it is drafted broadly, and also covers funds that do not self-identify as venture capital, such as certain **growth equity or private equity funds**, and **corporate strategic investors**, if they satisfy California’s new statutory definitions.
- **March 1, 2026:** Covered entities must register with the California Department of Financial Protection and Innovation (“DFPI”) and provide basic identifying information (name, address, contact details, and a designated compliance contact). Note that California has not yet made the DFPI registration portal available.<sup>1</sup>
- **April 1, 2026 (and annually thereafter):** Covered entities must file an [annual report](#) with the DFPI containing anonymized, aggregated demographic data regarding portfolio company founders for qualifying investments made in the prior calendar year. **Filed reports will be made publicly available on the DFPI’s website.** To meet this deadline and prepare for future compliance, fund managers of covered entities should:
  - Designate internal compliance responsibility for registration, reporting, and ongoing DFPI communications.
  - Inventory, for each covered entity, all 2025 transactions to identify reportable venture capital investments (i.e., acquisitions of securities in operating companies as to which the investment adviser, the fund, or an affiliate has or obtains management rights, such as board representation or observer rights).<sup>2</sup>
  - Prepare internal processes for distributing the DFPI’s [standardized demographic survey](#) after closing any initial (or, if not previously reported for that year, subsequent) funding of portfolio companies (and for collecting<sup>3</sup> the completed forms).
  - Develop required disclosure language to accompany the survey, to ensure participation by portfolio companies remains voluntary.
  - Establish appropriate data handling protocols and store original response records securely for the required five-year retention period. For some managers, this may include engaging a third-party vendor to administer surveys and aggregate results.
- **Penalties:** Failure to comply may result in penalties of **up to \$5,000 per day** after a 60-day cure period following notification from the DFPI, with additional penalties for reckless violations and knowing violations, as determined by the DFPI commissioner.

## Who Is Covered?

A “covered entity” under the FIPVCC includes any entity that satisfies **each of** the following criteria: (1) qualifies as a venture capital company, (2) primarily engages in the business of investing in, or providing financing to, startup, early-stage, or emerging growth companies, **and** (3) has a California nexus. Notably, the FIPVCC does not define “startup,” “early-stage,” or “emerging growth companies,” and covered entities should monitor DFPI guidance for any forthcoming clarification on these terms.

### Venture Capital Company Definition

The FIPVCC defines a “venture capital company” by reference to [Title 10, Section 260.204.9 of the California Code of Regulations](#). An entity qualifies as a venture capital company if it satisfies **any one** of the following:

- **50% Asset Test:** On at least one occasion during each annual period, at least 50% of its assets (other than short-term investments), valued at cost, are “venture capital investments”<sup>4</sup> or “derivative investments.”<sup>5</sup>
- **Advisers Act Definition:** The entity meets the definition of “venture capital fund” under [Rule 203\(l\)-1 of the Investment Advisers Act of 1940](#).
- **ERISA Definition:** The entity meets the definition of “venture capital operating company” (“VCOC”) under [Rule 2510.3-101\(d\) of ERISA](#). We note that it is customary for VCOC firms, in connection with their venture deals, to use management rights letters, which should be reviewed to see whether they may contain the kinds of rights that trigger FIPVCC coverage (which we discuss in footnote 4 below).

**Important:** A fund’s formal investment strategy label is not determinative. As noted above, certain **growth equity and private equity funds**, and **corporate strategic investors** may be required to report if they satisfy California’s new statutory definition of a venture capital company.

### Broad California Nexus Requirements for Foreign and Domestic VCs

Just as the fund’s formal strategy label (on a website or in the fund’s pitch deck) is not determinative of FIPVCC coverage, the firm lacking an office or other physical presence in California is also not dispositive of FIPVCC coverage. Instead, the location of the fund’s investors and portfolio companies can also, independently, create “nexus” sufficient to require reporting. Accordingly, a **venture capital company** has a “California nexus” if it satisfies **any one** of the following criteria:

- is headquartered in California;
- has a significant presence or operational office in California;
- **invests in a company that is based in or primarily operates in California; or**
- **solicits or receives investments from a California resident or entity.**

These nexus standards cast a wide net and may apply to funds that do **not** consider California a primary market. A fund with no physical presence or portfolio companies in California can become a covered entity by soliciting a subscription from just one California-based investor (even if that solicitation is not successful), giving the FIPVCC national reach. We appreciate that this nexus requirement obligates funds to grapple with both (i) what constitutes “soliciting” a potential investor, and (ii) whether and how to track which potential investors are “California-based” (and how and for how long the firm must retain records of this tracking). As this is new legislation, we expect further clarity and guidance to emerge, though much of it will entail judgment calls made by practitioners and fund managers.

Because **the statute does not limit coverage to U.S.-based funds, non-U.S. venture capital companies that invest in California-based companies or that solicit or accept investments from California residents or entities may also be subject to the FIPVCC’s registration and reporting requirements.** Importantly, once a fund establishes a California nexus, its reporting duties extend to **all qualifying investments worldwide** — not just those in U.S.- or California-based companies — which may present practical challenges when surveying founders of non-U.S. portfolio companies that may be unfamiliar with U.S. demographic categorizations. Moreover, this aspect of required FIPVCC reporting raises questions about the collection of demographic data where collecting that data may run afoul of the laws of the non-U.S. jurisdictions in which the venture firm and/or its other portfolio companies are located.<sup>6</sup> Clearly, FIPVCC would require a covered fund to also collect data from

non-California and non-U.S. holdings, and while the portfolio company is not obligated to provide data, the fund is required to distribute the form and attempt collection. We are prepared to help fund managers with geographically sprawling portfolios to navigate these complexities.

## Reporting Requirements

Covered entities must file an annual report for each fund and register with the DFPI. Fund managers that manage covered venture capital companies may register and file on the covered entities' behalf. The report must include:

- **Founder Demographics:** Aggregated demographic data (gender identity, race, ethnicity, disability status, LGBTQ+<sup>7</sup> status, veteran/disabled-veteran status, and California residency) for each "founding team member," defined as a person who owned initial shares, contributed to the business concept before shares were issued, and was not a passive investor, or a person designated as CEO or president – with counts of those who declined to respond. We note that "[s]ixty-eight countries [currently] criminalize same-sex sexual relations... In up to twelve countries, same-sex sexual relations may be punishable by death..."<sup>8</sup> Again, it is important to understand that the DFPI's **survey form** itself clearly states: "**Participation Is Voluntary**" (bold in original) and that "A founding team member's decision to disclose demographic information is voluntary. No adverse action will be taken against a founding team member who declines to participate in the survey. Only aggregated and anonymized data collected for each demographic category will be reported to the DFPI."
- **Investment Statistics:** The number and total dollar amount of investments in businesses primarily founded by "diverse founding team members," each expressed as a percentage of the fund's total investments and broken out by demographic category. FIPVCC defines "diverse founding team member" to mean "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." For this purpose, a company is "primarily founded by diverse founding team members" only if (i) more than one-half of the founding team members responded to the survey, and (ii) at least one-half of those founding team members are "diverse founding team members."
- **Investment-Level Information:** The total dollar amount invested in each company and each company's principal place of business.
- **Required Written Disclosures:** Affirmation that participation was voluntary; the covered fund manager did not encourage, incentivize, or otherwise influence responses; and "no adverse action will be taken against the founding team member if they decline to participate in the survey."
- **Record-Retention Obligations:** Fund managers must retain original, individual-level survey responses and related records for at least five years and make them available to the DFPI upon request.

The DFPI will assess a **minimum filing fee of \$175**, which may be adjusted as necessary to meet the reasonable costs of administration.

## Survey Process and Privacy Guardrails

The FIPVCC requires covered entities to obtain founder demographic information by offering each founding team member the opportunity to complete a survey on a standardized form specified by the DFPI, which may be sent only after execution of definitive investment documents and funding. To protect founder privacy and prevent coercion, the statute prohibits covered entities and the DFPI from pressuring or influencing whether a founder responds. All survey responses must be collected and submitted in anonymized form, and the DFPI's standardized survey expressly informs founders that participation is optional and that declining will not result in adverse consequences.

Given these privacy requirements – including the mandate to collect and report data in a manner that does not associate responses with individual founders – covered entities may consider using a third-party survey tool that aggregates data before it reaches the fund's compliance and/or deal team, which can create a structural barrier between investment personnel and individual-level demographic information and help reinforce the voluntary nature of the survey process. Because founder demographic information constitutes sensitive personal information, covered entities should implement appropriate privacy and data governance controls – including ensuring that internal records of individual responses are kept in a restricted-access folder for the mandatory five-year retention period.

Given the breadth of the FIPVCC's California nexus provisions, a significant portion of venture capital companies and fund managers – including those with limited California touchpoints – will likely be subject to these reporting requirements. We encourage clients to monitor the DFPI's website where the registration and reporting portals will be made available.

Lowenstein Sandler LLP will continue to monitor the DFPI's rollout of registration portals, reporting templates, FAQs, and interpretive guidance and is available to assist clients in assessing coverage and preparing for compliance.<sup>9</sup>

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<sup>1</sup> As of 10:00 a.m. ET on February 2, 2026, the [DFPI's website](#) provided that the VCC Registration Portal is "coming soon."

<sup>2</sup> "Management Rights" is defined in [Title 10, Section 260.204.9 of the California Code of Regulations](#) to mean "the right, obtained contractually or through ownership of securities, to **substantially** participate in, **substantially** influence the conduct of, or provide (or offer to provide) **significant** guidance and counsel concerning the management, operations, or business objectives of the operating company" (emphasis added). Because management rights may be "obtained contractually," funds that obtain rights to designate board member(s) and/or board observers in management rights letters in connection with their investments – even if they do not actually exercise those board or observer designation rights – may be acquiring "venture capital investments" that trigger reporting obligations under the FIPVCC.

We read the definition of "management rights" under the California Code to mean that management rights letters that simply provide for information and the opportunity to confer with management – without the right to designate one or more board members or observers – likely would not (by virtue of that entitlement to confer) be creating sufficient "management rights" to cover them under FIPVCC, though additional rights may still otherwise trigger coverage. However, given that the definition of "management rights" under the California Code is different from the meaning of "management rights" under ERISA and other laws, as this is new legislation, we expect further clarity and guidance to emerge. At present, we expect determinations of which management rights (short of board seats or board observer rights) do or do not trigger coverage will entail judgment calls made by practitioners and fund managers.

<sup>3</sup> The [form](#) itself instructs the founders to "[r]eturn the completed Survey directly to the venture capital company from which your business received investment" and not to "return a completed Survey to the DFPI."

<sup>4</sup> The FIPVCC defines "venture capital investments" by reference to [Title 10, Section 260.204.9 of the California Code of Regulations](#) to mean 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. (The definition of "management rights" is included in footnote 2 above.) Note that the term "venture capital investment" is defined for these purposes under the California Code, and that definition is different from the definition of a "qualifying investment" used for purposes of defining a "venture capital fund" under the Investment Advisers Act of 1940. Note that it is also not clear from this definition whether securities acquired in secondary transactions are intended to be included in the definition of a "venture capital investment."

<sup>5</sup> As with "venture capital investments," the FIPVCC defines "derivative investment" by reference to [Title 10, Section 260.204.9 of the California Code of Regulations](#) to mean an acquisition of securities by a venture capital company in the ordinary course of its business in exchange for an existing venture capital investment either (i) upon the exercise or conversion of the existing venture capital investment or (ii) in connection with a public offering of securities or the merger or reorganization of the operating company to which the existing venture capital investment relates. We read this to mean, for instance, SAFEs, convertible notes, warrants, and other similar convertible or exchangeable securities.

<sup>6</sup> Following World War II, numerous nations in Europe prohibited the collection of race and ethnicity data. More recently, GDPR has imposed restrictions on collecting and using that type of data. Different nations in Europe have carved out conditions to permit the collection and use of that data. See, e.g., ["INSIGHT - COVID toll turns spotlight on Europe's taboo of data by race,"](#) Reuters (Nov. 19, 2020). For instance, the UK has explained that the "Data Protection Act 2018 establishes conditions that permit the processing of the special categories of personal data" (UK Department of Health & Social Care, ["Guidance: How DHSC processes special category data"](#) (updated July 24, 2025).

<sup>7</sup> We use the terminology as shown in the [form](#) required by the DFPI under the FIPVCC.

<sup>8</sup> Human Rights Campaign, "Globe Act" (last updated Aug. 27, 2025), also noting that this "means that more than one-third of United Nations Member States criminalize consenting, adult, same-sex sexual relations" and "so-called anti-LGBTQ+ 'propaganda' laws inhibit LGBTQ+ advocacy in at least three countries." For a list of the member states imposing this legislation, see also HRC's ["Criminalization Around the World"](#) (updated October 2023).

<sup>9</sup> Lowenstein Sandler LLP does not undertake (and hereby disclaims) an obligation to inform or notify third parties of developments, except to the extent we are engaged to do so by our specific clients.

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