

AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 6 ON BUDGET PROCESS, OVERSIGHT AND PROGRAM EVALUATION AND ASSEMBLY BANKING AND FINANCE COMMITTEE

ASSEMBLYMEMBERS PHIL TING, MONIQUE LIMÓN, CHAIRS

THURSDAY, AUGUST 6, 2020
8:30 A.M., STATE CAPITOL, ASSEMBLY CHAMBER

Informational Hearing

Governor's 2020 Proposal on Consumer Financial Protection and Innovation

- I. Introduction from Chair and Members
- II. Governor's Proposal on Consolidation of Regulation and Perspectives from Current Licensing Agencies
 - Manuel P. Alvarez, Commissioner, Department of Business Oversight
 - Drew Soderborg, Deputy Legislative Analyst: Public Safety and Business Regulation, Legislative Analyst's Office
 - Kimberly Harbison, Principal Program Budget Analyst, Department of Finance
- III. Public Comment

Public Participation Information

Due to the statewide stay-at-home order and guidance on physical distancing, seating for this hearing will be very limited. All are encouraged to watch the hearing from its live stream on the Assembly's website at: <https://www.assembly.ca.gov/todaysevents>.

*Remote Testimony Stations (RTS) and a moderated telephone line will be available to assist with public participation. The public may provide comment either by going to an RTS or by calling the following toll-free number: **1-877-692-8957 / Access Code: 24 26 237**. The public may also send written testimony to: BudgetSub6@asm.ca.gov.*

Remote Testimony Station locations may be found on the Budget Subcommittee #6 website at: <https://abgt.assembly.ca.gov/sub6hearingagendas>.

INFORMATIONAL ONLY

1701 DEPARTMENT OF BUSINESS OVERSIGHT

ISSUE 1: CALIFORNIA CONSUMER FINANCIAL PROTECTION AND INNOVATION

The Governor's budget includes resources and trailer bill language to rename the Department of Business Oversight (DBO) to the Department of Financial Protection and Innovation (DFPI), provide the department with additional authority, and expand and restructure the department and its main funds. The proposal authorizes the department to take enforcement actions against financial service providers for unfair, deceptive, or abusive acts or practices and to register providers of consumer financial services.

BACKGROUND

The LAO summarized the various state and federal entities that have responsibilities for protecting California consumers of financial products and services below:

Department of Business Oversight (DBO). DBO was created on July 1, 2013, with the merger of the Department of Financial Institutions and the Department of Corporations pursuant to the Governor's Reorganization Plan No. 2 of 2012. The department serves as California's primary regulator of financial service providers, products, and professionals.

California Department of Justice (DOJ). Under the direction of the Attorney General, DOJ has broad enforcement authority to bring legal cases against entities—including financial product and service providers—that engage in unfair, deceptive, or unlawful business practices under state and federal laws. For example, in recent years, DOJ has successfully brought cases related to mortgage abuses by large banks, unlawful debt collection practices, and misconduct by providers and servicers of student loans.

Other State Departments. Various other state departments also regulate providers of financial products and services. For example, the Department of Insurance licenses title companies that administer real estate settlement services. Additionally, the Department of Real Estate licenses certain lenders and brokers. These departments have the authority to take enforcement actions against their licensees when they engage in unlawful practices.

Federal Consumer Financial Service Protection Efforts. The federal government also has an important role in protecting consumers of financial products and services. Notably, in 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (commonly known as Dodd-Frank). Dodd-Frank created a new entity—the Consumer Financial Protection Bureau (CFPB)—and gave it responsibility for ensuring consumer protection in the financial sector at the federal level. Along with this, Dodd-Frank prohibited providers of consumer financial products or services from engaging in any

unfair, deceptive, or abusive acts or practices (UDAAPs), and gave the CFPB and state regulators authority to take enforcement actions related to UDAAPs.

Governor's Trailer Bill Language

According to the Governor, the federal government's rollback of the CFPB leaves Californians vulnerable to predatory businesses and leave companies without clarity they need to innovate.

The Governor's budget proposes trailer bill language to authorize the Department of Financial Protection and Innovation (DFPI) to carry out various new responsibilities and activities. Under the Governor's proposal, these various statutory changes would be referred to as the California Consumer Financial Protection Law (CCFPL). The latest version of the CCFPL is dated July 29, 2020, and according to DBO, reflects conversations and suggestions from various stakeholders, including consumer groups, industry, and the Legislature. The major provisions of the July 29, 2020, trailer bill language are summarized below:

Specifically, the proposed language authorizes DFPI to:

1. *Perform Broad Range of Activities Related to UDAAPs.* The proposal authorizes DFPI to investigate and take enforcement actions (such as assessment of administrative penalties and filing of civil lawsuits) against a covered person or service provider that offers financial products or services to California consumers, small businesses, nonprofits or family farms for unfair, deceptive, or abusive acts or practices (UDAAPs). The proposal authorizes the department to define UDAAPs through the regulatory process, as well as prescribe rules aimed at preventing UDAAPs.
2. *Require Financial Service Providers to Register.* The Governor's proposal authorizes DFPI to require entities providing financial products or services to California consumers to register with the department. The department indicates that it anticipates registering all providers of consumer financial products or services that are not currently registered with or licensed by DBO or another state department. These providers are known as new covered persons or NCPs. Under the proposed language, DFPI would have the authority to require registrants to file various reports, submit to background checks, and pay registration fees, which the department may set by regulation.
3. *Applicability.* The trailer bill language exempts activities conducted under the authority of existing licensing laws, whether administered by DBO or by other state departments, from the provisions of the CCFPL except for the prohibition against UDAAPs. In placing these provisions under the new law, the Administration seeks a level playing field for enforcement of UDAAP violations by those currently licensed and those newly registered.
4. *Conduct Certain Additional Activities.* The proposal grants the commissioner explicit authority to engage in various activities, such as (1) investigating,

researching, analyzing, and reporting on markets for financial products and services, (2) developing and implementing outreach and education programs to underserved customers and communities, and (3) developing and implementing initiatives to promote innovation, competition, and consumer access within financial services.

5. *Possess Joint Regulatory Authority Over Existing Consumer Protection Laws.* The proposed language specifies that, when DFPI and another department have joint authority over these consumer protection laws, DFPI shall consult with the relevant departments at certain points during the process of promulgating regulations. However, the commissioner may not amend or rescind a regulation promulgated by another department.
6. *Clarifies Cooperation with the Attorney General.* The department may enter into an agreement with the Attorney General with respect to civil actions by each agency. Provides that nothing shall limit the powers or authority of the Attorney General's ability to prosecute violations of civil or criminal laws related to consumer financial law.
7. *Restructure Department and Its Main Funds.* The Governor proposes to restructure the department in ways that would effectively eliminate the distinction between its two licensing divisions—DFI and DOC. Consistent with existing practice, the DBO states that it will continue to separately account for the expenses and recoveries related to the administration of each licensing law, and the annual assessments paid by existing licensees will not fund the expanded activities authorized by the CCFPL.
8. *Requires Annual Reporting.* The proposal requires the commissioner to provide an annual report detailing actions taken during the prior year under the law. The report shall include, but not be limited to, information on actions taken with respect to rulemaking, enforcement, oversight, consumer complaints and resolutions, education and research.

Funding Resources in the 2020-21 Budget

AB 89 (Assembly Budget Committee), the Amendment to the 2020 Budget Act, included provisional language with respect to CCFPL program:

If state law is amended to provide authority for the California Consumer Financial Protection Law program, the Department of Finance may augment this item by an amount deemed necessary to implement the program. Any augmentation made pursuant to this provision shall not occur sooner than 30 days after written notice is provided to the Joint Legislative Budget Committee, or not sooner than whatever lesser time the chairperson of the joint committee, or the chairperson's designee, may determine. Notice to the Joint Legislative Budget Committee may be provided in advance of the enactment of the amendments to state law described in this provision.

The Governor's budget proposed and the provisional language includes a provision to allow DOF to augment the budget if the trailer bill is enacted. The resources included in the Governor's budget are as follows: \$10.2 million and 44 positions in 2020-21 — increasing to \$19.3 million annually and 90 positions in 2022-23—for DFPI from the proposed FPF. These resources are intended to support the implementation of the CCFPL. In addition, the funding would allow the department to establish the following new offices:

- Financial Technology Innovation Office. Research new innovative technologies and trends and encourage innovation related to financial industries
- Market Monitoring, Consumer Research, Insights, and Analytics Office. Provide reports on a variety of topics, such as market trends and consumer behavior.
- Targeted Consumer Outreach and Education Office. Develop educational materials and web tools to educate consumers and conduct outreach to schools and universities on financial education.

The DBO indicates that the resources to support these activities would be derived from two different sources within the new FPF. Initially, the department plans to use funds from settlements of previous enforcement actions to support these activities. On an ongoing basis, the department plans to fund these activities from registration fees DFPI would be authorized to collect under the Governor's proposal, as well as future settlement funds.

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| STAFF COMMENT |
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The Governor's trailer bill proposal raises a number of issues that the joint committee may explore and examine.

The joint committee may wish to ask DBO the following:

1. How should the legislature balance providing enough authority to DFPI to address the evolving market while protecting the legislature's role of legislating future aspects of this market?
2. Can the department currently bring enforcement actions against current licensees for UDAAPs? As currently drafted, will this bill hold current licensees liable for violations related to their licensing laws as well as liable for violations under the new consumer protection law?
3. How will the department enforce the provisions under this law before regulations are promulgated?
4. What is the department's estimate of the universe of covered persons who will have to register under this law?
5. Will this trailer bill set up a system where persons are registered but not licensed? What will be the difference between being licensed versus registered? Does a

registered group ever become licensed? Does registration become defacto licensing?

6. The trailer bill allows the commissioner to conduct additional activities through an Office of Innovation, what is the scope of those activities, and how will they be defined? How does the department envision reporting its findings to the Legislature?
7. What is the department's expectation of what happens in Years 1, 2, and 3 of this bill?
8. Does DOF anticipate requesting funding through the JLBC process before this legislation is signed? Is this a normal practice?

Funding Resources in the 2020-21 Budget.

Staff recommends revisiting the funding resources included in this proposal once the scope of the DFPI's future responsibilities is decided. The trailer bill language will shape the funding resources necessary for DFPI to do its work for the upcoming year.

Staff Recommendation: Informational item only.
