



STUDENT BORROWER
PROTECTION CENTER



beneficial state foundation

FREQUENTLY ASKED QUESTIONS ABOUT THE GOVERNOR'S DEPARTMENT OF BUSINESS OVERSIGHT ("DBO") BUDGET PROPOSAL

SUMMARY: Families across the state are experiencing financial shocks that leave them vulnerable to predatory lenders, aggressive debt collectors and other financial sector bad actors. Yet California's financial regulator, the Department of Business Oversight (DBO), lacks comprehensive oversight over the financial services industry at a time when it is more needed than ever. The Governor's budget proposal would fix this problem by renaming DBO the Department of Financial Protection and Innovation (DFPI) and ensuring that the new DFPI has the necessary tools to monitor everyone from debt collectors, to credit bureaus, to so-called "fintech" companies offering fast cash to consumers. The proposal is completely paid for by funds previously earned from fees and penalties. No General Fund money is sought. The proposal would protect consumers, small businesses, and communities at a time when more Californians than ever before are struggling to stay above the eligibility thresholds for Generally Funded safety net programs.

In light of COVID-19, how important is it to revamp DBO this year?

The importance of meeting this moment with better consumer financial protections cannot be overstated. Due to the COVID-19 crisis, more than four million Californians have filed unemployment claims. Unscrupulous financial service providers are right now marketing risky loans and aggressively collecting debts, adding insult to injury for desperate families. With unemployment skyrocketing and consumers' financial situation increasingly desperate we urgently need an agency focused on enforcing laws against unfair loan schemes, deceptive "debt relief" operations, and other predatory financial practices. Since DBO's supervisory powers are currently limited it cannot monitor

industries that are not expressly written into the Financial Code. Debt collectors and many fintech lenders, for example, can evade oversight right now.

In the aftermath of the last financial meltdown commencing in 2008, desperate consumers were subjected to debt relief scams, predatory lending, and aggressive debt collection actions. Financial scammers came out of the woodwork. These abusive financial practices push people into bankruptcy, poverty, Generally Funded safety net programs, and slow down the timetable for recovery. However, this can be prevented if we have an effective consumer watchdog.

The California Attorney General and Federal Trade Commission are reporting sharp spikes in fraud complaints relating to stimulus payments, government loans, and relief schemes. In LA County one of the largest debt collectors filed *more* collections lawsuits against consumers in April 2020 than in April 2019. We know that hard economic times are here for millions. Some will try to take advantage of the most vulnerable among us: seniors, communities of color, veterans, and low-income communities. We need a public watchdog to monitor financial businesses, enforce guardrails to help companies operate lawfully and on a level playing field, and bring lawsuits when necessary to protect consumers. Most importantly, we know that the time to create that watchdog is now.

How would the new DFPI work with the Attorney General and other law enforcement agencies?

“...from my perspective having the state’s version of the CFPB, but with teeth, would be powerful to help us in our work to protect all Californians against consumer abuse, so let’s move forward. I’m hopeful that the Governor succeeds in providing for our people every protection we can through whatever means possible.” --Attorney General Becerra, May 7, 2020

The Attorney General and the DFPI would work together the same way other departments like the Departments of Insurance, Managed Health Care, Cannabis Control, and Public Health do. The Attorney General has the power to enforce all of the State’s laws, including those laws that bind the companies or sectors regulated by these departments. This has never proven to be a problem in any other setting. The Attorney General does not oversee these companies. The Governor’s proposal expressly ensures that the new DFPI coordinates with the AG’s office before taking any regulatory or enforcement actions. The proposal would not infringe upon the AG’s civil or criminal enforcement authorities.

Crucially, the proposal would also enable DFPI to support the enforcement work of other agencies through its supervision work. Under California’s Unfair Competition Law

(Business & Professions Code section 17200, et seq.) every District Attorney and certain city attorneys are already empowered to enforce state and federal consumer financial laws. However, these agencies are generally structured to do enforcement, not supervision or regulation. The ability to periodically examine consumer finance companies and to collect and investigate consumer complaints is essential in order to spot emerging risks and make informed decisions about enforcement. DFPI would be in a position to distinguish compliant vs. noncompliant companies and work with its sister agencies to target resources accordingly.

In addition to preventing harm to Californians and additional burdens to our safety net caseloads, why else is the proposal needed?

Three main reasons:

- 1) As the fifth-largest economy in the world, California’s 40 million consumers and law-abiding companies deserve a world-class, well-functioning market that does not financially reward unlawful conduct.
- 2) We need more public enforcement, and we need it now. Recent U.S. Supreme Court decisions have made it virtually impossible as a practical matter for consumers and private litigants to hold companies accountable. In the past decade, the Court has held that companies can use boilerplate fine print contract provisions to force consumers into arbitration and to compel consumers to waive their right to participate in a class action.¹ This means that under such agreements consumers can only bring an individual case where the financial upside for private lawyers is too small to litigate against large companies. In other words, almost every time a consumer clicks “I agree” or signs a fine print contract, there will be no dependable private enforcement. Only public agencies like the proposed DFPI can fill the justice gap.
- 3) It is common for the state to designate and empower specific regulators to bring cases and enforcement actions. For example, we permit lawsuit enforcement by the Departments of Managed Health Care, Labor and Workforce Development, Insurance, and Fair Employment and Housing, to name just a few, even though the AG could theoretically bring every case those agencies could bring.

¹ https://www.supremecourt.gov/opinions/17pdf/16-285_q8l1.pdf