
Special Alert: Trailer bill would enact California Consumer Financial Protection Law

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A [trailer bill](#) accompanying the governor's [proposed 2020-2021 state budget](#) would expand the Department of Business Oversight's (DBO) authority and enact the California Consumer Financial Protection Law (Law).

Specifically, the provisions outlined in the proposed Law would revamp and rename the state's DBO, expand its authority to protect consumers from predatory practices, and foster the responsible development of new financial products. Under California's Constitution, a trailer bill — which provides for an appropriation related to the budget bill — takes effect immediately after a simple majority vote and the governor's signature.

Key Takeaways

- The legislature must act on the governor's proposed budget by June 15, and expansion of DBO authority and oversight could occur this summer — although the legislature may amend the bill.
- California's economy is the sixth largest in the world. The expansion of the DBO's authority could lead to sweeping changes in business practices in other states.
- While the DFPI's name and authority will reference innovation, it is unclear how it will pursue oversight of fintech companies in a way that promotes innovation.
- It is unlikely DFPI will create a fintech sandbox; California's attorney general was among 22 state attorneys general who opposed the Consumer Financial Protection Bureau's fintech sandbox initiative.
- UDAAPs appear to be a significant focus in the trailer bill, with California poised to step into the shoes of the CFPB. The financial industry should expect to see an increase in oversight and enforcement under the DFPI.

Background

The proposed budget would support the Law's implementation by allocating to the DBO a \$10.2 million Financial Protection Fund and 44 new positions in 2020-2021, increasing to \$19.3 million and 90 positions in 2022-2023 (previous Buckley coverage [here](#)). The stated purpose of the trailer bill is to (i) promote nondiscriminatory access to responsible, affordable credit based on terms that "reasonably reflect consumers' ability to repay"; (ii) promote nondiscriminatory access to consumer financial products and

services in a manner that is “understandable and not unfair, deceptive, or abusive” (UDAAP); (iii) protect consumers from financial practices and services that may be discriminatory, unfair, deceptive, and abusive; (iv) promote consumer-protective innovation in consumer financial products and services that is nondiscriminatory; and (v) to expand the number of companies that may directly or indirectly acquire control of an industrial bank to include, among other entities, companies that are “predominantly engaged in financial activities” as defined by 12 C.F.R. § 242.3, which is broader than the definition currently referenced (i.e., companies engaged in activities permitted for financial holding companies, as provided by the Gramm-Leach-Bliley Act (12 U.S.C. § 1843(k)(1)).

Overview

The trailer bill would change the name of the DBO and transfer all its power, responsibilities, and functions to the Department of Financial Protection and Innovation (DFPI). No action or proceeding taken by the DBO, or a predecessor commissioner or department, would be invalidated because of the change. Among other things, the trailer bill:

- Grants DFPI authority to prescribe rules regarding registration requirements for covered persons, set and collect annual registration fees, and suspend or revoke the license or registration of a covered person or service provider. DFPI also may require registration through the Nationwide Multistate Licensing System and Registry of persons and entities that have previously not been subject to licensure or registration.
- Grants DFPI the right to “regulate the offering and provision of consumer financial products or services under California consumer financial laws,” (the trailer bill lists approximately 51 applicable enumerated California laws), along with the authority to exercise oversight and enforcement authority under these laws, as well as federal consumer financial laws to the extent permissible under federal law. Additional authority includes (i) bringing administrative and civil actions, issuing subpoenas, and prosecuting civil actions before state and federal courts; (ii) conducting hearings and issuing publications and reports that may assist in implementing the purposes of the proposed Law; and (iii) performing other functions as authorized or required by law. The commissioner also “has the discretion to make public or private investigations within or outside of [California] as [deemed] necessary to determine whether a person has violated or is about to violate” any of the provisions, rules, or orders issued pursuant to this division. If the trailer bill passes, DFPI’s authority will no longer be dependent on, for example, the California Financing Law and the California Residential Mortgage Lending Act, and therefore, its authority will extend beyond oversight of lending activities under these two and other currently enumerated laws.
- Sets forth a number of new definitions, many of which appear to be modeled after federal law, providing that “[t]hese definitions shall be interpreted with reference to, and, wherever reasonable, construed as consistent with, the definitions in Section 1002 of Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. § 5481). Any

inconsistency shall be resolved in favor of greater protections to the consumer and more expansive coverage.” Included among the definitions are “covered person” and “financial product or service,” as well as the following “federal enumerated consumer financial laws,” among other laws, which would provide the DFPI independent authority to regulate activity under such laws:

- Alternative Mortgage Transaction Parity Act
- Consumer Leasing Act
- Electronic Fund Transfer Act
- Equal Credit Opportunity Act
- Fair Credit Billing Act
- Fair Credit Reporting Act
- Home Owners Protection Act
- Fair Debt Collection Practices Act
- Federal Deposit Insurance Act
- Gramm-Leach-Bliley Act
- Home Mortgage Disclosure Act
- Home Ownership and Equity Protection Act
- Military Lending Act
- Real Estate Settlement Procedures Act
- Secure and Fair Enforcement for Mortgage Licensing Act
- Truth in Lending Act
- Truth in Savings Act
- Omnibus Appropriations Act, Section 626
- Interstate Land Sales Full Disclosure Act

- Servicemembers Civil Relief Act
- Mandates the application of the bill’s provisions to any covered person who meets any of the following conditions: (i) “offers or provides origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with those loans”; (ii) is a licensee of DFPI or a registrant required to be registered by statute or by rule of DFPI; (iii) DFPI “has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity for the covered person to respond, that the covered person is engaging, or has engaged, in conduct that poses risks to consumers or small businesses with regard to the offering or provision of financial products or services”; (iv) offers or provides private education loans to consumers as defined under TILA Section 140; (v) offers or provides payday loans to consumers; or (vi) is a service provider to a person in sections (i) to (v).
- Designates entities that are exempt from DFPI’s authority, such as merchants, retailers, and other sellers of nonfinancial goods and services, subject to certain conditions including that the entity does not regularly extend credit as defined under TILA. Specific licensees are also exempt, except that DFPI may exercise its authority if the licensee (i) is engaged in the offering or providing of a consumer financial product or service; (ii) is a service provider to a covered person “in connection with the offering or provision by that covered person of a consumer financial product or service”; or (iii) is otherwise subject to any enumerated consumer financial law. DFPI is not tasked with “licensing authority or supervisory and enforcement powers as to any matters other than the offering and provisioning of consumer financial products and services.” According to the [budget change proposal](#), a Supervision and Registration Office will be created to oversee new classes of covered persons offering financial services to state residents.
- States that DFPI may, through rulemaking, define standards for UDAAP. The bill also outlines UDAAP examples for which DFPI may have the authority to take action.
- Authorizes DFPI to assess UDAAP penalties including (i) rescission or reformation of contracts; (ii) refund of moneys or return of real property; (iii) restitution; (iv) disgorgement or compensation for unjust enrichment (disgorged amounts should be returned to affected consumers as practicable); (v) payment of damages or other monetary relief; (vi) public notification regarding the violation, as well as the cost to provide notification; (vii) limits on a person’s activities or functions; and (viii) tiered-monetary penalties.
- Outlines requirements for responding to consumer complaints or inquiries, and sets forth disclosure requirements should a consumer request information provided in connection with a consumer financial product or service.

- Creates a new Financial Technology Innovation Office in San Francisco (Innovation Office) intended to encourage innovative financial products and services and notify DFPI of emerging products and services. The primary functions of the new office will be to: (i) “engage with new industries and entrepreneurs to encourage innovation and job creation in California”; (ii) “modernize laws relating to industrial banks to enable [fintech] companies to operate nationwide with a single DBO registration”; and (iii) “research new industries, new and innovative technologies, emerging trends, and the integration of new technologies into traditional financial services.” In creating the Innovation Office, the proposed budget requests, among other things, the appointment of a chief executive administrator who will report on research findings generated by Innovation Office staff and advise on policy considerations for regulating new industries.
- Expands fair lending education, outreach, and communication efforts, with the desired goal of increasing transparency. This includes the creation of a new Consumer Financial Protection Division that will focus on research, education, and outreach through the creation of the Market Monitoring, Consumer Research Insights and Analytics Office and the Targeted Consumer Outreach and Education Office (Education Office). Among other things, the Education Office will implement initiatives intended to provide military service members access to fair and affordable consumer financial products and services, especially while deployed. Other targeted groups are seniors, students, and populations of people new to the state, recent immigrants, or those with limited English proficiency.
- Grants DFPI the ability to develop and implement outreach and educational programs to underserved consumers and communities, as well as initiatives to promote financial services innovation, competition, and consumer access.

If the trailer bill passes, institutions engaged in business in California should expect to see significant changes to regulatory oversight by the DFPI.

If you have any questions regarding the California Consumer Financial Protection Law or other related issues, please visit our [Consumer Finance](#) practice page or contact a Buckley attorney with whom you have worked in the past.