

# The 2020-21 Budget: Reinventing the Department of Business Oversight

## Summary

**Key Entities Involved In Consumer Financial Service Protection.** Various entities are involved in consumer protection related to financial products and services. For example, the Department of Business Oversight (DBO) licenses a wide range of financial service providers, such as banks, money transmitters, and broker-dealers. Additionally, at the federal level, the Consumer Financial Protection Bureau takes enforcement action against financial product and service providers engaged in unfair, deceptive, or abusive acts or practices (UDAAPs).

**Governor's Proposal.** The Governor proposes budget trailer legislation to make various changes related to DBO, such as changing its name to the Department of Financial Protection and Innovation (DFPI), providing it with authority to take enforcement actions against financial service providers for UDAAP violations and register providers of consumer financial services. Under the proposal, the department's two main funds would be merged to form a new fund—the Financial Protection Fund (FPF)—and the regulation of industrial banks would be modified. The Governor's budget proposes \$10.2 million from FPF and 44 positions in 2020-21, increasing to \$19.3 million annually and 90 positions in 2022-23 to support DFPI's implementation of these changes and related activities.

**Assessment.** The concept of improving consumer protection related to financial products and services has merit. However, the Governor's proposal raises several key questions related to the (1) appropriate role for DFPI, (2) preferred approach to funding DFPI and its new proposed activities, (3) regulation of industrial banks, and (4) process that should be used for making policy choices. We also find that the specific choices the Legislature makes could affect the amount and timing of the funding needed by the department. Finally, we find that the Governor's proposed funding approach fails to acknowledge key uncertainties, such as the level of workload associated with the various proposed new activities.

**Recommendations.** We recommend that the Legislature consider the Governor's proposed statutory changes through the legislative policy process. This would allow the changes to be vetted by the policy committees that have expertise on the specific issues that are raised. In addition, this would better position the Legislature to determine which policies should be established in statute and which could be left to the regulatory process. To the extent the Legislature allows DFPI to use the regulatory process, we recommend that the Legislature not authorize the department to use the emergency regulation process.

Depending on the choices the Legislature makes, we recommend it adjust the funding it provides accordingly. Regardless of its choices, we recommend that the Legislature take a more incremental approach to providing funding for DFPI. In particular, we recommend that the Legislature reject the funding requested for positions that are not needed in the budget year, and that the Legislature fund some activities on a limited-term, pilot basis. This more incremental approach would improve legislative oversight over DFPI and ensure that it is appropriately resourced for its new responsibilities.

## BACKGROUND

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As summarized below, various state and federal entities have responsibilities for protecting California consumers of financial products and services.

### **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. DBO is composed of two main licensing divisions. The Division of Financial Institutions (DFI)—which is supported primarily by the Financial Institutions Fund—licenses financial institutions, including banks, credit unions, and money transmitters. The Division of Corporations (DOC)—which is supported by the State Corporations Fund—licenses various other financial entities, including investment advisors, securities broker-dealers, and student loan servicers.

**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 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 authority to take enforcement actions related to UDAAPs.

## GOVERNOR'S PROPOSAL

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The Governor has expressed concern that the federal government has pulled back in the area of consumer protection in the last few years and has indicated that the state could benefit from a more robust system of consumer financial protection. Accordingly, the Governor's budget plan includes various policy and budgetary changes in the area of consumer financial protection. First, the Governor proposes budget trailer legislation to expand DBO's authority, restructure the department and its main funds, and modify the regulation of industrial banks. Second, the proposed budget includes additional

funding related to these changes. Under the Governor's proposal, DBO would be renamed the Department of Financial Protection and Innovation (DFPI). We describe the various proposed changes in greater detail in this section.

### **Proposed Budget Trailer Legislation**

**Change DBO's Authority.** The Governor proposes budget trailer legislation to authorize 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). Specifically, the proposed language authorizes DFPI to:

- **Perform Broad Range of Activities Related to UDAAPs.** The proposal authorizes DFPI to take enforcement actions (such as assessment of administrative penalties and filing of civil lawsuits) against any provider of financial products or services to California consumers, small businesses, nonprofits or family farms for UDAAPs. The proposal authorizes the department to define UDAAPs, as well as proscribe rules aimed at preventing UDAAPs, through the regulatory process. Finally, the proposal generally prevents the courts from enjoining DFPI's enforcement orders in order to prevent them from taking effect.
- **Conduct Certain Additional Activities.** The proposal grants the department explicit authority to engage in various activities, such as (1) studying and reporting on markets for financial services, (2) implementing outreach and education programs to underserved customers and communities, and (3) implementing initiatives to promote innovation, competition, and consumer access within financial services.
- **Possess Broad Regulatory Authority Related to Existing Consumer Protection Laws.** In addition to the regulatory authority described above, the proposal authorizes DFPI to (1) promulgate regulations interpreting and implementing a wide range of existing California laws related to consumer protection and (2) examine entities for compliance with those regulations. 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.
- **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. Additionally, the department could specify rules of conduct for these entities by regulation.

**Restructure Department and Its Main Funds.**

In addition, the Governor proposes to restructure the department in ways that would effectively eliminate the distinction between its two licensing divisions—DFI and DOC. The proposed language also merges the two main funds that support the department—the State Corporations Fund and Financial Institutions Fund—into a new fund known as the Financial Protection Fund (FPF). (The department's two other small funds—the Credit Union Fund and the Local Agency Deposit Security Fund—would remain separate.)

**Modify Regulation of Industrial Banks.** The Governor's proposed budget trailer legislation also changes the requirements for entities to qualify as industrial banks, which are financial institutions that typically provide more limited services than traditional banks and are subject to different regulatory requirements than traditional banks. For example, unlike traditional banks, industrial banks do not necessarily take deposits. Under current law, only entities involved exclusively in financial activities can control an industrial bank. The proposed language instead only requires that entities controlling industrial banks be predominately engaged in financial activities.

**Provide Emergency Regulation Authority.** The proposed language provides DFPI with the authority to promulgate emergency regulations to implement the CCFPL. As a result, regulations to implement the above changes would go into effect on a shorter time line and be subject to less up-front public input.

### Additional Funding to Support New Activities

The Governor proposes \$10.2 million and 44 positions—increasing to \$19.3 million annually and 90 positions in 2022-23—for DFPI from the proposed FPF. These additional 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.

**Figure 1** displays the activities that the proposed positions are anticipated to undertake. The administration 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. (These settlement funds are currently in the State Corporations Fund and Financial Institutions Fund which would be consolidated into the proposed FPF.) 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.

<b>Figure 1</b>				
<b>Positions Proposed to Implement the Consumer Financial Protection Law</b>				
<b>Activity</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>	<b>2023-24 and ongoing</b>
Enforcement	9	12	16	16
Supervision of NCPs	7	15	26	26
Targeted Consumer Outreach and Education Office	5	9	9	9
Financial Technology Innovation Office	4	4	4	4
Market Monitoring, Consumer Research, Insights and Analytics Office	3	6	6	6
Legal	3	6	8	8
Information Technology	3	6	6	6
Communications	2	2	2	2
Human Resources	2	4	4	4
Business Operations	2	3	3	3
New Executive for Consumer Financial Protection Regulation	1	1	1	1
New Executive to Oversee Securities and Franchise Regulation	1	1	1	1
New Ombudsman	1	1	1	1
Fiscal Management	1	2	3	3
<b>Totals</b>	<b>44</b>	<b>72</b>	<b>90</b>	<b>90</b>

NCPs = new covered persons.

## ASSESSMENT

We think that the concept of improving consumer protection—particularly in the area of financial products and services—has merit. This is because financial products and services can be complex and consumers can be vulnerable to being taken advantage of by financial service providers. Additionally, financial products and services directly affect the financial well-being of Californians. Accordingly, a robust system of consumer protection can help protect California consumers as they access these products and services, and this can enhance their economic security. However, in reviewing the Governor’s proposal, we identified three main issues that merit legislative consideration. First, the proposal raises various key policy and process questions (such as how broad of an authority should be provided to the department). It will be important for the Legislature to consider these questions and determine whether various aspects of the proposal align with its priorities. Second, the answers to these key policy and process questions will inform the level of resources required to implement specific changes adopted by the Legislature. Third, we note that there is significant uncertainty about the level of ongoing need for additional resources. We describe each of these issues in greater detail below.

### PROPOSAL RAISES VARIOUS KEY POLICY AND PROCESS QUESTIONS

The Governor’s proposal raises several key policy and process questions for the Legislature to consider. Specifically, these questions relate to the (1) appropriate role for DFPI and breadth of its authority, (2) preferred approach to funding DFPI and its new proposed activities, (3) regulation of industrial banks, and (4) process that should be used for making policy choices.

#### Role and Authority of DFPI

***What Should DFPI’s Role Be Relative to the Federal Government?*** The administration indicates that a key rationale for its proposal is

that the federal government—particularly CFPB—has been pulling back from consumer protection under the current presidential administration. As a result, according to the administration, the state cannot rely on the federal government to ensure the financial protection of Californians. However, the federal government could change its approach over time, particularly if there is a change in presidential administrations. This raises the question of whether California’s long-term policy choices should be driven by the current federal approach.

The administration further argues that, regardless of the federal government’s approach, the state should take a greater role in ensuring Californians are protected in the area of financial services since the state can focus more heavily on issues of local or regional concern. While we agree that the state can better target its own efforts to areas it prioritizes, the Legislature will want to weigh whether that additional focus provides sufficient value to justify the state’s efforts in such areas. For example, the Legislature may want to ask the department to report on the scale of consumer complaints about UDAAPs that went unaddressed during the time period when the federal government was taking a more proactive enforcement approach. This information would help the Legislature assess the extent to which the need for more robust consumer financial protection efforts depends on the approach taken by the federal government.

***What, If Any, UDAAP Authority Should DFPI Have?*** The Legislature will want to consider whether to expand the state’s financial protection efforts by providing DFPI authority to take action against financial product and service providers for UDAAP violations as proposed by the Governor. Alternatively, the Legislature could consider taking a different approach, such as by relying more heavily on DOJ’s existing authority to bring legal cases against entities that engage in unfair, deceptive, or unlawful business practices. The administration argues that DFPI should have UDAAP authority, so it can fulfill the objective of serving as a state agency dedicated to consumer financial protection.

Additionally, the administration states because DOJ's scope is broad and not specifically focused on financial products and services, it may overlook financial services violations due to resource constraints and competing priorities. However, if the Legislature wanted DOJ to more actively pursue financial product and service providers for UDAAP violations, it could direct the department to do so and provide it with resources dedicated to such work.

To the extent the Legislature decides to provide DPFI the authority to take action against UDAAP violations, it would be important to determine the:

- **Entities Affected by UDAPP Authority.**

The Legislature will want to consider which entities DPFI could take action against for UDAAP violations. The Governor's proposal would not only provide the department with this authority over all providers of financial products and services to consumers, but also small businesses, nonprofits, and family farms. Notably, in practice, this would not only increase DPFI's authority over unregulated entities, but also its existing licensees (and licensees of other state departments, as described below).

- **Scope of UDAAP Authority.** The Legislature will also want to consider the scope of the authority that should be granted to the department. For example, the Governor's proposed budget trailer legislation would provide DFPI with administrative and civil penalty authority to enforce UDAAP violations, which it currently only has in some areas. Additionally, the proposal would generally prevent the courts from enjoining DFPI's orders. (The administration indicates it may revise this portion of the CCFPL, but the nature of these revisions is not yet clear.)

**What Should DFPI's Role Be Relative to Other State Regulatory Departments?** The proposed language would authorize DFPI to take action against licensees of other state departments for UDAAP violations. However, the language is not clear which department takes precedence if disagreements arise between departments, and it is not clear what additional value there

would be by giving DFPI this joint authority. The Legislature will want to consider what authority to provide DFPI with respect to licensees of other state departments and whether to specify how departments should work together when they share authority. Furthermore, the proposed language would authorize DFPI to promulgate regulations related to consumer protection in areas of statute that overlap with the jurisdictions of other departments. Under the Governor's proposal, when overlap does take place, DFPI would be required to consult with the other departments that have jurisdiction at certain points during the regulatory development process. The Legislature will also want to consider which entity should be held accountable in areas where DFPI and another department have joint jurisdiction.

**What Activities Should DFPI Engage In?** As previously discussed, the Governor's proposal would grant the department explicit authority to engage in various activities, such as (1) reporting on markets for financial services, (2) implementing outreach and education programs to underserved customers and communities, and (3) implementing initiatives to promote innovation, competition, and customer access within financial services. These activities may or may not align with the Legislature's policy priorities for the department. Moreover, there could be other areas that would merit additional specificity—such as further defining what is meant by initiatives to promote innovation and what specific outcomes the Legislature expects to achieve with these efforts.

**Should DFPI Have Authority to Register NCPs?** We find that there are likely trade-offs related to requiring registration. Specifically, resources would be needed to register these entities. These resources would largely be funded through fees paid by regulated entities, the costs of which could be passed on to the public in the form of higher prices for financial services and products. However, the department indicates that registration would serve some key purposes, such as enabling it to require annual reporting and take administrative actions to facilitate its enforcement efforts. This ultimately could result in benefits to consumers of financial services and products. Given these trade-offs, the Legislature will want to consider

whether it would like to give DFPI the authority to require entities to register. Additionally, it will want to consider whether the requirements placed on registrants align with the Legislature's preferred level of oversight over them. For example, the Legislature is currently considering a bill—SB 908 (Wieckowski)—that would require debt collectors to be licensed, which is generally considered to be a higher level of oversight than registration.

Under the Governor's proposal, the department estimates that it would require roughly 9,000 NCPs to register and that the large majority of these NCPs—roughly 7,000—would be debt collectors. Some of the other types of entities that are anticipated to be required to register include franchise brokers (500 entities) and non-merchant providers of retail sales financing (360 entities).

## Funding of DFPI's Activities

**What Source of Revenues Should Support Proposed Activities?** As previously mentioned, the administration anticipates funding the first three years of the proposed activities from settlement funds. Under current law, however, there are limitations on the use of these funds. As a result, the department has had difficulty using these funds—resulting in the balance of unused funds that currently totals roughly \$140 million. As an alternative to the Governor's proposal, the Legislature could dedicate these settlement funds to other activities, such as those that would more directly benefit existing licensees whose fees supported the enforcement activities that generated the settlement revenues. For example, it could authorize these funds to be used to offset some costs of licensing and enforcement activities. Accordingly, the Legislature will want to weigh whether the funds should support DFPI, as proposed, or if there are alternative uses it would prioritize.

On an ongoing basis, the administration plans to fund its proposed activities from new fees on NCPs as well as future settlement revenues (rather than increases in fees on existing licensees). To the extent that settlement revenues are not sufficient to fund the non-NCP specific activities proposed, costs could fall disproportionately on the NCPs rather than existing licensees under this approach. The Legislature will want to consider whether it is

comfortable with this funding approach or would prefer an alternative approach.

**Should Funds Be Consolidated?** The Legislature will also want to consider whether it is comfortable with the administration's proposal to merge the department's two main funds—the State Corporations Fund and Financial Institutions Fund. According to the department, the proposed consolidation would provide it with greater flexibility in the allocation of resources across activities and better reflect the proposed structure of the department, which would eliminate any distinction between the licensing divisions. While consolidation may have these benefits, the increased flexibility could come at the expense of some level of transparency and assurance that funds derived from one group of licensees are used exclusively to support their regulation. Additionally, the Legislature may want to consider whether it makes sense to retain the department's two other small funds if it is merging the two larger funds. Specifically, we are not aware of a clear policy rationale for having a separate fund for credit unions, but not separate funds for any other types of entities that the department licenses or registers.

## Regulation of Industrial Banks

**How Should Industrial Banks Be Regulated?** The proposed language would change the requirements for entities to qualify as industrial banks, with the intent of making it easier for entities—such as financial technology companies (known as Fintech companies)—that are not exclusively engaged in financial activities to secure an industrial bank charter in California. According to the administration, absent a change, some California-based entities will choose to seek charters in other states, such as Utah, that may impose fewer requirements on industrial banks. We note, however, that the Legislature has had some concerns about providing certain types of entities—such as major national retailers like Walmart—with the ability to secure industrial bank charters. As such, the Legislature has placed limitations on the companies that can obtain them. Accordingly, it will be important for the Legislature to consider whether to make changes to the regulation of industrial banks.

## Process for Making Policy Choices and Determining Details

***Should Changes Be Made in Policy Process or Budget Trailer Legislation?*** The Governor proposes implementing the CCFPL through budget trailer legislation rather than through the legislative policy process. In our view, the legislative policy process is a more appropriate venue for considering the types of significant policy changes that are proposed as part of the CCFPL. This is because, under the legislative policy process, proposals are heard in policy committees with a greater focus on the policy issues under consideration. The administration indicates that it is proposing the CCFPL through budget trailer legislation because the proposal has a large fiscal component. However, we do not find this to be a compelling argument for a few different reasons. First, many policy changes that have fiscal components are considered through the policy process. Moreover, the proposal uses only special funds and thus will not affect the larger architecture of the state budget, making it less critical that it be heard by budget committees. Finally, the policy aspects of the proposal—which make fundamental changes to the state’s approach to financial regulation—are far more significant than its fiscal aspects—which would allocate \$10.2 million of the \$222 billion proposed in the Governor’s 2020-21 budget.

***Should Key Details Be Specified in Statute or Determined by Department?*** The proposed language would provide DFPI authority to determine many key details—such as which entities to register, the levels of the fees to charge them, and what constitutes an abusive practice—through the regulation process. This means that DFPI and the administration—rather than the Legislature—would make these key policy choices. Accordingly, the Legislature may want to consider whether to provide more specific guidance in statute rather than relying on the regulation process.

***Should Regulations Be Adopted Through Regular or Emergency Rulemaking Process?*** Even in cases where the Legislature is comfortable allowing DFPI and the administration to make key policy choices through the regulation process,

we note the proposed language authorizes the department to use the *emergency* regulation process. This is significant because the emergency regulation process greatly reduces public input prior to regulations taking effect. Accordingly, the emergency rulemaking process is typically reserved for cases where immediate action is needed to avoid serious harm to the public peace, health, safety, or general welfare. In our view, the department has not made a compelling argument that the immediate harms are sufficient to justify this truncated process that limits up-front public input. Instead, we find that it is more appropriate for DFPI to go through the regular rulemaking process in cases where the Legislature is comfortable with allowing DFPI to implement policy through regulations. This would provide for more robust public input prior to the rules taking effect.

## POLICY AND PROCESS DECISIONS WILL AFFECT FUNDING DECISIONS

We find that the Legislature’s ultimate policy decisions regarding the proposed statutory changes could affect the level of additional resources DFPI needs. For example, if the Legislature decides not to have DFPI register all the NCPs—either because it does not find that registration provides sufficient value or because it would prefer to instead license some or all of these entities—the workload associated with registering these NCPs would be less than assumed in the Governor’s budget. Additionally, if the Legislature does not provide DFPI the authority to implement emergency regulations, this could delay the need for certain resources.

## PROPOSED FUNDING APPROACH FAILS TO ACKNOWLEDGE UNCERTAINTY

***Uncertain Level of Ongoing Workload in Many Areas.*** We find that there is uncertainty regarding the level of ongoing workload in many areas of the Governor’s proposal. This is in large part because the activities and many of these functions are new, so it is difficult to predict how much work will be involved. For example, there



is some uncertainty regarding the number of registrants that the department will have, which would affect registration workload. Furthermore, there is uncertainty regarding the level of workload that will be involved in taking enforcement actions against these licensees because it is not clear how frequently these entities would violate the CCFPL. We note the department estimates that the enforcement workload will be similar to the workload it has related to the California Financing Law Program—which requires the licensing and regulation of finance lenders and brokers making and brokering consumer and commercial loans. However, this is a different program that is governed by different laws and has fewer regulated entities. Moreover, the uncertainty is compounded because key aspects of the CCFPL would be established through regulations that have yet to be created. For example, final determinations about which entities to register and what constitutes an abusive practice—key determinates of future workload—would not be finalized until the completion of the regulation process under the administration’s proposal. Accordingly, the overall workload associated with the CCFPL is highly uncertain.

***Given Uncertainty, Inadequate Rationale for Funding Out-Year Increases.*** The Governor proposes to ramp-up staffing over a few years.

For example, in 2020-21, the Governor proposes 44 positions, growing to 72 in 2021-22 and 90 in 2022-23. It is unclear why these out-year increases in staffing need to be approved in 2020-21 given that they will not be needed until future years and the level of uncertainty described earlier. Furthermore, approving only the resources needed in the budget year would provide the Legislature with an opportunity to revisit the appropriate amount of support to provide the department for its new proposed activities with the benefit of additional information on the department’s implementation.

***Effectiveness of Some Efforts Unclear.*** The Governor proposes resources for new research and outreach activities through the establishment of the Financial Technology Innovation Office; Market Monitoring, Consumer Research, Insights and Analytics Office; and the Targeted Consumer Outreach and Education Office. The concept of these new activities is promising because there could be value in collecting and disseminating information on financial services. However, there is uncertainty regarding what they will achieve in practice. Accordingly, if the Legislature is comfortable supporting them in concept, it may wish to understand how effective they are in practice before committing to providing ongoing funding for them.

## RECOMMENDATIONS

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### Consider Proposed Changes Through Policy Process and Weigh Trade-Offs

As described earlier, the proposed budget trailer legislation raises a number of substantial policy questions. Given the number and significance of the policy questions raised, we recommend that these changes be considered through the legislative policy process. This would allow the changes to be vetted by the policy committees that have expertise on the specifics of the issues that are raised. In addition, this would better position the Legislature to determine which policies should

be established in statute and those that could be left to the regulatory process. To the extent the Legislature allows DFPI to use the regulatory process, we recommend that the Legislature not authorize the department to use the emergency regulation process.

As the Legislature makes its policy choices, we recommend that it consider the key trade-offs we identified in our assessment of the Governor’s proposal. For example, it will be important for the Legislature to weigh whether the additional costs that could be passed on to consumers generate benefits to consumers that outweigh those costs.

## Adjust Funding to Reflect Policy and Process Choices

Once the Legislature makes its policy determinations through the policy process, the budget process could be used to provide the appropriate funding levels to implement the approved changes. Specifically, we recommend the Legislature adjust the funding provided to the department to reflect the specific policy choices it makes. For example, if the Legislature rejects the language authorizing DFPI to register NCPs, it would want to eliminate the associated funding for that activity.

## Take Incremental Approach to Providing Funding

***Do Not Fund Out-Year Increases Given Uncertain Workload.*** Given the uncertainty regarding the level of ongoing workload for DFPI to implement the CCFPL, we recommend the Legislature take an incremental approach. As part of this, we recommend rejecting the proposed out-year funding increases, because there is no reason they need to be approved at this time. Instead, to the extent that the DFPI needs additional resources in future years, it can return

to the Legislature to request them. This approach would enhance legislative oversight by requiring the department to report back to the Legislature on its progress implementing the CCFPL. Furthermore, it would help ensure that the department is appropriately resourced for its activities, since the department will have more information on key workload drivers—such as the number of NCPs that are subject to registration—when it returns to request additional funding.

***Provide Some Resources on Limited-Term Basis to Pilot New Activities.*** We recommend that the Legislature provide the department with some resources on a limited-term basis, such as where there is uncertainty about the effectiveness of the activities being proposed. For example, if the Legislature would like to fund the Financial Technology Innovation Office, Market Research Office, and Consumer Outreach and Education Office, we recommend approving the funding for them on a pilot basis by authorizing three year limited-term funding. This should provide the Legislature with additional information on the effectiveness of these efforts—and whether they are meeting any goals identified by the Legislature—before it commits to funding them on an ongoing basis.

## LAO PUBLICATIONS

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This report was prepared by Helen Kerstein, and reviewed by Drew Soderborg and Anthony Simbol. The Legislative Analyst's Office (LAO) is a nonpartisan office that provides fiscal and policy information and advice to the Legislature.

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