The Honorable Toni Atkins
Speaker Pro Tempore
California State Senate

The Honorable Anthony Rendon
Speaker
California State Assembly

The Honorable Holly Mitchell, Chair
Senate Committee on Budget and Fiscal Review

The Honorable Phil Ting, Vice Chair
Assembly Committee on Budget and Fiscal Review

May 27, 2020

Support: Governor's May Revise Proposal for a Department of Financial Protection and Innovation (DFPI)

Dear Legislative and Budget Leadership:

I write on behalf of the National Consumer Law Center (NCLC) in support of the Department of Financial Protection and Innovation, which is necessary to protect California consumers during the COVID-19 crisis and beyond. Governor Newsom's proposal would strengthen the Department of Business Oversight (DBO) by expanding its scope as the Department of Financial Protection and Innovation (DFPI), and establish DFPI as a regulator with comprehensive oversight of the financial industry. We thank both the Governor and the DBO for their leadership, and their willingness to take our suggestions into consideration.

The nonprofit NCLC works for economic justice for low-income and other disadvantaged people in the U.S. through policy analysis and advocacy, publications, litigation, and training. We have issue area experts in a wide range of consumer finance issues from mortgages to debt collection to high-cost loans. We work with advocates and policymakers at both the federal and state levels to help craft policies that protect the most vulnerable. In light of federal-level policy and consumer protection failures, it is incumbent upon the states to implement solutions that meet the needs of the most vulnerable communities.

NCLC has submitted to the California State Legislature an issue brief which summarizes and links to detailed emergency and long-term consumer protection recommendations for states. Specifically, it includes eight areas of recommendations for legislative action—Vehicle Ownership and Auto Finance, Credit Reporting, High-Cost Loans, Criminal Justice Debt, Medical Debt, Homeowners, Debt Collection, and Utility Services. Each recommendation includes background on what has been done in California so far, what must be done as the emergency continues, and reforms that can mitigate the unprecedented, long-term economic crisis that California now faces.

The proposal to turn the DBO into the DFPI and to empower the expanded agency to better protect consumers is an incredibly important one that will be well-complemented by our broader recommendations to protect consumers. To effectively address the COVID-19 economic crisis, we must have better state tools to oversee the financial industry and protect vulnerable Californians. Indeed, the proposal to create the DFPI is even more urgent now than it was four months ago when first proposed.

Due to the COVID-19 crisis, 4.7 million Californians have filed unemployment claims—resulting in an unemployment rate of almost 25%. With consumer spending making up almost 70% of the U.S. Economy, consumers are simply too big to fail.

Unscrupulous financial service providers, however, continue to market risky loans and aggressively collect debts, adding insult to injury for desperate families. New technologies are also leading to new ways of providing financial products and services that may fall into cracks in, or be designed to evade, existing consumer protections. DBO does not always have the clear, undisputed authority it needs to oversee consumer financial markets and to prevent or stop abuses from happening. For example, providers of a new form of fintech payday loan claim that they are simply paying earned wages early and therefore their products are not "loans" regulated by the DBO or the Consumer Financing Law. In some cases, such as DBO's recent actions against Sezzle, AfterPay and QuadPay, DBO has been forced to take action to obtain compliance with and clear up misconceptions about its existing authority, but more flexible authority not tied to older licensing regimes would enable the DFPI to better protect consumers as financial products and services evolve. An enhanced DFPI would also be better positioned to spot and address problems in long-regulated but under-enforced markets.

Consumer protection, including through the regulatory oversight and enforcement actions of the proposed DFPI, is a powerful and necessary economic development tool that will keep consumers in their homes, in their cars, able to return to work, and able to invest their wages in their local communities. When consumers are unprotected from immediate threats of financial harm, they may ultimately require General Fund support and services, increasing costs to the state. Instead, the DFPI would position California well to provide appropriate oversight, and to ensure that consumers do not have more of their limited assets drained by unscrupulous lenders and debt collectors.

Arguments have been offered that the DFPI proposal requires additional deliberation, and has not yet received appropriate vetting. This is untrue. Significant conversations have occurred in the past four months between stakeholders, the DBO, and the Governor's administration. If we fail to act now, we may create a vicious cycle where bad actors go unchecked and take advantage of consumers and businesses. In turn, these individuals will fall further behind and be unable to fully participate in our eventual economic recovery.

As the economic recovery may take a very long time, the options - and protections - available to consumers now will impact their lives for the next several years, with persisting challenges lingering as a result of the COVID-19 crisis. As such, the California legislature should waste no time in passing the Governor's proposal for the DFPI.

Please do not hesitate to contact our legislative advocate Samantha Corbin at samantha@corbinandkaiser.com

Sincerely,

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About NCLC: The nonprofit National Consumer Law Center® (NCLC®) works for economic justice for low-income and other disadvantaged people in the U.S. through policy analysis and advocacy, publications, litigation, and training.