May 11, 2020

The Honorable Gavin Newsom  
Governor, State of California  
State Capitol, First Floor  
Sacramento, CA 95814

RE: Budget Proposal to Restructure the Department of Business Oversight

Dear Governor Newsom:

We appreciate the opportunity to share our concerns regarding the governor’s January budget proposal to restructure the Department of Business Oversight (DBO). We applaud the desire to provide a regulatory framework and supervision for unregulated entities that are offering financial products or services. Such an approach ensures greater consumer protection and levels the playing field among financial service providers. We share a common goal of ensuring that adequate safeguards are in place to protect consumers, while making sure we can still provide the financial services and products that our customers desire. We appreciate your willingness to consider the concerns expressed below.

**Limited Opportunity for Public Hearings**

The proposal to restructure the DBO includes substantive public policy reforms to the Financial Code. We continue to believe that these revisions to the Code should be subject to the typical legislative process where committees with the underlying policy expertise can consider the ramifications of the proposal rather than being incorporated into a truncated budget discussion that has only been shortened given the Coronavirus pandemic. Prior to the Legislature recessing, several public hearings were scheduled in the Assembly and Senate to review this specific proposal but were subsequently canceled. Our concern is that moving these reforms on an expedited basis without adequate feedback and input will result in unintended consequences.

This is a significant concern for the trade associations on this letter because our membership is already subject to oversight by various California and/or federal regulators and regulatory regimens that typically include examination, investigation, and enforcement authority. We are unaware of any detailed policy discussion or analysis on how the new requirements that the proposal imposes will
overlay with the comprehensive set of statutory and regulatory requirements applicable to current state licensees and state or federally charted depository institutions. We are subsequently concerned the proposal will have unintended consequences, such as significantly increasing the compliance burdens of regulated financial institutions and making it more difficult for such entities to do business in California.

Even before the pandemic, our perspective was shared by the independent Legislative Analyst’s Office (LAO) in a report released on February 26, 2020, titled Reinventing the Department of Business Oversight. The LAO’s report raises several thoughtful questions, ultimately recommending 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.”

Financial Services Providers Focused on Relief Efforts and Economic Recovery

Given the economic impact associated with the Coronavirus, DBO licensed entities have been deeply engaged and singularly focused on deploying important financial relief. Instability and substantive change to the regulatory landscape at this moment is not ideal and may result in distracting these entities from the important work that needs to be done to help customers and the economy recover. Accordingly, we request that advancing this proposal be delayed and that minimally, the legislative process described above be given an opportunity to adequately review its impacts.

Heightened Concern with UDAAP Authority

The proposal restructuring DBO includes new authority to enforce against unfair, deceptive or abusive acts or practices (UDAAP) which appears premature. Proposed language references that the terms "unfair" and "deceptive" are already defined; however, there is no similar definition of the term "abusive." The proposed language attempts to define "abusive" by using similar language as that in section 1031(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). We note that the CFPB has attempted to define "abusive" since its inception in July 2011 and only recently, in January 2020, have they issued a Policy Statement on the topic.

In response to the Coronavirus pandemic, financial service providers have been asked to stretch when working with their customers and to be flexible. Some of this flexibility has required moving quickly at the request of policymakers to deploy important relief. While we were concerned with the UDAAP provisions before, this new authority becomes even more concerning given the flexibility financial service providers have been given, and directed to apply, when trying to help customers during this pandemic. Retroactive liability exposure for trying to stretch to meet the moment gives us considerable concern.
Rather than grant this authority with the notion that greater detail will be provided at a later date, presumably through regulation, we request that the Administration clearly define the scope of what it wishes to accomplish first and the manner in which the authority will be applied. Minimally, we recommend the "abusive" standard be consistent with the CFPB's Policy Statement and that the proposed approach be vetted and debated through the legislative process rather than the budget process.

**Focus on Unregulated Entities**

Should this proposal continue to advance, we request that it be narrowed by exempting incumbent licensees and that it focus on unregulated entities and specific issues, concerns and statutory gaps where existing law fails to adequately provide consumer protections.

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Promoting fair and honest business practices, enhancing consumer awareness and protecting consumers are key tenets of the current mission of the DBO, and fully supported by California’s licensed entities. Our members look forward to being a resource and an important voice in the dialogue to ensure that our state continues to be a pioneer in innovation, while adequately safeguarding Californians.

Sincerely,

California Bankers Association  
California Community Bank Network  
California Credit Union League  
California Financial Services Association  
California Mortgage Association  
California Mortgage Bankers Association

cc: Manuel Alvarez, Commissioner, Department of Business Oversight  
Melissa Immel, Deputy Legislative Secretary, Office of the Governor  
All members, Assembly Committee on Banking and Finance  
All members, Assembly Budget Subcommittee 4 on State Administration  
All members, Senate Committee on Banking and Financial Institutions  
All members, Senate Budget Subcommittee 4 on State Administration & General Government