https://www.wsj.com/articles/new-york-california-want-more-power-over-the-financial-sector-11584351002

POLITICS

New York, California Want More Power Over the Financial Sector

State officials say they want to expand local enforcement of consumer protections

California Gov. Gavin Newsom has proposed expanding and renaming the Department of Business Oversight, which oversees banks and other financial services providers.

PHOTO: RICH PEDRONCELLI/ASSOCIATED PRESS

By Corinne Ramey
March 16, 2020 5:30 am ET

The governors of New York and California are proposing significant expansions of state regulatory power over consumer financial services, saying federal oversight has become lax under the Trump administration.

The expanded state agencies, the Democratic governors say, would help compensate for what they see as a lack of enforcement by the federal Consumer Financial Protection Bureau. President Obama and congressional Democrats created the CFPB in the wake of the financial crisis to help consumers harmed by problems involving mortgages and other consumer-finance products.

The proposals, if approved during budget negotiations in two of the largest states, could lead to similar changes elsewhere and train more scrutiny on Wall Street and financial institutions across the country, legal experts say.

In New York, Gov. Andrew Cuomo has proposed expanding the Department of Financial Services, which has become a major Wall Street watchdog in its almost decade of existence. It oversees more than 1,800 insurance companies and 1,500 financial institutions with over $7 trillion in assets combined.

Mr. Cuomo's proposal would allow DFS to seek larger financial penalties and expand its ability to investigate alleged consumer fraud. It would effectively give the agency the ability to bring investigations like those that are authorized under the Martin Act, which currently gives the New York attorney general broad powers with which to probe securities fraud.

DFS also would gain jurisdiction over securities and companies offering investment advice. The agency could also levy civil penalties against entities that it found engaged in some types of fraud, without being required to show that the fraud was intentional.

"It would mean the expansion of an already aggressive agency into a totally new realm," said Joel M. Cohen, a partner at law firm Gibson, Dunn & Crutcher LLP.

In California, Gov. Gavin Newsom proposed expanding and renaming the Department of Business Oversight, which oversees banks, securities brokers, investment advisers and other financial services. His proposal would increase the agency's $103 million budget by at least $19.3 million and add 90 positions to its total of nearly 600 within the next few years.

New York and California officials said they are pushing for the new powers because of less enforcement at the federal level. Public Consumer Financial Protection Bureau enforcement cases dropped to 11 in 2018 from a high of 55 in 2015, according to data compiled by the Consumer Federation of America, an advocacy group.

"The federal government's rollback of the CFPB leaves Californians vulnerable to predatory businesses and leaves companies without the clarity they need to innovate," Mr. Newsom's budget summary says.

A CFPB spokeswoman didn't respond to multiple requests for comment. Agency leaders have previously said the watchdog's mission is moving toward financial education.

"Quite simply, the single best policy to protect American consumers and foster financial inclusion is to ensure that consumers have the ability to make their best choices in free markets," Brian Johnson, the agency's then-No. 2 official, said in a June speech.

SHARE YOUR THOUGHTS

Is greater state enforcement over consumer financial and banking services needed? Join the conversation below.

Messrs. Cuomo and Newsom made the proposals in their respective state budgets, which are negotiated with lawmakers. New York's budget must be finalized by March 31. The California deadline is June 15.

Joseph Reilly, a Washington, D.C.-based lawyer who advises consumer-finance and banking clients, said some California-based firms are wary of the proposal, since more funding typically results in more investigations. But one provision, the creation of a financial-technology innovation office, is appealing to companies developing new products that operate in a regulatory gray area, he said.

"There are a lot of innovators who are coming up with ideas and products that face an obstacle of too much regulatory uncertainty," he said.

In New York, Wall Street has long complained that the Martin Act already gives the attorney general too much power to bring civil and criminal cases against banks. Some defense lawyers say DFS investigations and enforcement are already harsh and expensive, and less predictable than probes brought by federal agencies.

"This is potentially problematic and business unfriendly," said New York-based lawyer Jay Auslander, referring to the addition of powers that are similar to those granted by the Martin Act.

A DFS spokeswoman said the agency would continue to lead investigations and take action against predatory and fraudulent practices.

Mike Smith, president and chief executive of the New York Bankers Association, a trade organization for financial institutions across the state, said the group was discussing the proposal with state officials as part of budget negotiations.

Proponents of the New York proposal have praised changes that would essentially lower the bar for pursuing some types of fraud by no longer requiring proof of intent.

"Right now they are hamstrung from really going after a lot of bad practices," said Kirsten Keefe, a senior staff attorney at Empire Justice Center, a nonprofit law firm that advocates for low-income people.

Mr. Cuomo was unsuccessful in a previous push to expand DFS's powers in 2017. Then-Attorney General Eric Schneiderman opposed it, calling it "a wholly unnecessary overreach by the executive." A spokesman for Mr. Cuomo then called the dispute a counterproductive turf battle.

A spokesman for New York Attorney General Letitia James, a Democrat, declined to comment on the current proposal.

Write to Corinne Ramey at Corinne.Ramey@wsj.com