

## **Alert** | Financial Regulatory & Compliance



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### **Deputizing State AGs: CFPB Issues Broad New Interpretive Rule on States' Ability to Enforce Federal Consumer Protection Laws**

On May 19, 2022, the Consumer Financial Protection Bureau (CFPB or Bureau) issued an interpretive rule ([Section 1042 Interpretive Rule 5 19 2022](#)) confirming that the Consumer Financial Protection Act of 2010 (CFPA) provides states with wide-ranging powers—independent of the Bureau—to enforce federal consumer protection laws.

#### **Background**

In a press release announcing the new rule ([CFPB Bolsters Enforcement Efforts by States](#)), CFPB Director Rohit Chopra explained the Bureau's motivation: "In the years leading up to the financial crisis, federal regulators undermined states seeking to protect families and businesses from abuses in the mortgage market. Our action today demonstrates our commitment to promoting state enforcement, not suffocating it."

To that end, the Bureau states its interpretive rule provides guidance and clarity on three topic areas:

1. States are permitted to enforce the CFPA's provision declaring it unlawful for covered service providers to violate any provision of consumer financial protection law;

2. States have authority to pursue enforcement against a broader range of companies and individuals than the CFPB itself; and
3. State enforcement actions can proceed independently and alongside CFPB enforcement actions.

The CFPB notes in this new rule that, while many states have brought enforcement actions on their own “to enforce a provision of the CFPA that prohibits unfair, deceptive, and abusive acts and practices in connection with the offering or provision of consumer financial products or services,” or have joined with the CFPB to seek enforcement of federal consumer financial laws, “few [states] have pursued such claims in their own CFPA actions.” With this introduction, the Bureau’s interpretation gives greater power to states wishing to take on enforcement roles.

### Analysis of Interpretive Rule

#### 1. States’ Ability to Enforce the CFPA

The CFPB’s interpretive rule stresses that, in enacting the CFPA, Congress envisioned states having an “important role . . . in overseeing the consumer financial marketplace.” Thus, “Congress provided States with their own Bureau enforcement authority” by permitting states’ attorneys general, after consultation with the Bureau, to bring actions to enforce the CFPA.

While the CFPB notes that states have already brought enforcement actions for unfair and deceptive practices, the Bureau is reminding states that the CFPA confers broad authority upon them to enforce federal consumer financial laws. These laws include the CFPA itself and 18 other federal laws enumerated therein (including the FDCA, RESPA, FCRA, TILA, etc., *see* 12 U.S.C. § 5481(12)), along with any CFPB rule, order, or regulation under the CFPA or under one of the 18 enumerated laws. This includes, for example, the Bureau’s rules implementing the Real Estate Settlement Procedures Act (Regulation X), the Truth in Lending Act (Regulation Z), and the Fair Debt Collection Practices Act (Regulation F).

The Bureau is also interpreting the CFPA to permit states to seek enforcement of “consent orders and other final orders issued by the Bureau” under certain other sections of the CFPA. This would allow a state to seek enforcement of a consent order between the CFPB and a private entity, even if that state was not a party to the order and even if the CFPB itself was not pursuing enforcement.

#### 2. States Have Authority to Bring Enforcement Actions Against a Broader Variety of Individuals and Entities than the Bureau

The Bureau’s rule also clarifies which individuals or entities may be targeted by state enforcement action and affirms that state enforcement authority “is generally not subject to certain limits applicable to the Bureau’s enforcement authority.” Under the CFPA, the Bureau has limits on its authority with respect to certain individuals and entities, including “merchants, retailers, and other sellers of nonfinancial goods . . . .” These limitations, however, generally apply only to the “Bureau” or the Bureau’s “Director,” not to states. Accordingly, the Bureau’s view is that a state may bring an enforcement action against certain individuals or entities, even if the Bureau itself is prohibited from doing so.

#### 3. State Enforcement May Be Independent of the CFPB

In addition to conferring broad enforcement power to states, the CFPB states that “state attorneys general and regulators may bring (or continue to pursue) action under [the CFPA] *even if* the Bureau is pursuing a concurrent action against the same entity” (emphasis added). According to the CFPB, this is because

Congress has “expressly” precluded concurrent CFPB actions with respect to certain claims, and it has “limited states’ ability to enforce rules relating to mortgage loan modification and foreclosure rescue services during the pendency of enforcement activity by either the Bureau or the FTC.” Congress did not, however, limit states’ ability to concurrently enforce federal consumer financial laws.

## Conclusion

This interpretive rule reinforces the authority long afforded to states under Section 1042, encouraging those states so inclined to increase their scrutiny and enforcement of federal consumer protection laws. The issuance of this interpretive rule underscores the Bureau’s previously stated intent to enhance coordination between itself and other state and federal regulators and enforcement agencies. The interpretive rule and the Bureau’s announcement of it also encourage parallel proceedings that may arise out of the same conduct. Although states must provide the CFPB with notice and an opportunity to intervene in actions brought under Section 1042, the CFPB’s rule appears to empower state attorneys general to independently enforce federal consumer financial laws, regulations, and Bureau consent orders, among other things. Whether states will accept this invitation, and whether federal courts will agree that the CFPB grants them such broad authority, remains to be seen.

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