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ALERTS

CFPB Reminds State Regulators Of Enforcement Powers

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Highlights

New rule empowers states to enforce the federal Consumer Financial Protection Act

States have broader authority than the Consumer Financial Protection Bureau (CFPB) to enforce violations of state and federal consumer protection laws against broader range of entities and persons

Enforcement by CFPB does not prohibit or limit state authority to bring enforcement actions for consumer protection law violations by traditional financial institutions, fintechs, crypto service providers and digital asset platforms

The Consumer Financial Protection Bureau (CFPB) recently announced and issued a new Interpretive Rule that delineates states' authority to enforce federal consumer financial protection laws. Citing the crucial role states play in protecting consumers, the CFPB made it plain that state attorneys general play an integral role in oversight and enforcement of the Consumer Financial Protection Act (the Act).

The Interpretive Rule is part of the CFPB's expanded efforts to support

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state enforcement activities and authority under the Act, beyond unfair and deceptive acts and practices (UDAAP).

As financial regulation grows in scope, traditional financial institutions, banks, fintechs, crypto service providers, and digital asset platforms cannot rely on the presumption that they need only adhere to prudential regulatory requirements.

Along with the Interpretive Rule, the CFPB announced its intent to propose additional methods to promote state enforcement of federal consumer financial protection law and ways to facilitate victim redress, identified in 2021, including expanding state attorney general enforcement authority.

The Interpretive Rule delineates states' authority to pursue violations of federal consumer financial protection laws in the following areas:

- **States can enforce the Consumer Financial Protection Act.** The Interpretive Rule makes it clear that states are empowered to enforce the Act, other specifically enumerated federal consumer laws, rules and orders proscribed by the CFPB, and certain other authorities. These powers include enforcing provisions applicable to service providers supporting entities who violate the Act.
- **States can pursue claims and enforcement against more entities than the CFPB can.** While the CFPB is limited by statute in which entities, products, and services is can supervise and regulate, the Interpretive Rule establishes that the states' authority is not similarly constrained. States can bring enforcement actions against a broader range of companies and persons than the CFPB.
- **CFPB enforcement actions do not prohibit state actions.** The Interpretive Rule also establishes that states can bring coordinated action with the CFPB or can act independently, whether the CFPB has chosen to act or not. In other words, alleged offenders can anticipate the possibility of facing more than one government action.

To encourage more state enforcement of federal consumer financial protection statutes, CFPB staff is exploring additional avenues for state enforcement and remedies under the CFPA and enumerated consumer laws and rules, including a focus on repeat violations and entities which fail to adhere to orders and requirements.

The CFPB has also identified specific efforts directed at the senior management and executive levels to reshape behavior and provide incentives oriented at compliance with consumer protection laws and regimes. Because of these efforts and regulatory focus, the CFPB has indicated that executives and managers should expect to face repercussions for any illegal acts and violations they direct.

In defining the intent of these new state enforcement powers, the CFPB intends to prevent companies from weaving in and out of state and federal regulatory oversight by, among other things, dropping their state charters for national charters because it may allow them to escape certain state regulations and oversight.

The CFPB's announcement and comments regarding state enforcement authority are in keeping with the general trend of increasing state legislation and regulatory scrutiny applicable to non-bank entities, financial technology and service providers, and digital asset-related businesses. Institutions and providers must navigate a growing and increasingly complex system of federal and state regulatory requirements, compliance regimes, consumer protection laws, and ongoing supervision and examination by a myriad of regulators.

As the CFPB announcement indicates, federal field preemption in the regulation of financial services may be a thing of the past.

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