

Cabinet News and Views

Informed analysis for the financial services industry



A Call to Arms: CFPB Encourages States to Use Federal Authorities to Bring Enforcement Actions



By **Rachel Rodman**
Partner | Global Litigation



By **Wesley Wintermyer**
Associate | White Collar Defense and Investigations

The Consumer Financial Protection Bureau ("CFPB") [issued](#) an [interpretive rule](#) on May 19, reiterating the authority that states have to pursue companies and individuals that violate federal consumer financial protection laws, including the Consumer Financial Protection Act of 2010 ("CFPA").

When Congress enacted the CFPA in 2010, it provided for concurrent enforcement by federal and state regulators. Congress viewed federal preemption of state enforcement efforts as one cause for the Great Recession, and it thus equipped states with express enforcement authority under the CFPA. The CFPB's new rule interpreting the CFPA is not subject to notice-and-comment rulemaking under the Administrative Procedures Act, and it will become effective upon publication in the Federal Register. The rule affirms that:

- **States are not limited by statutory limitations on the CFPB's enforcement authority.** The CFPA includes a long list of exemptions to the CFPB's authority, such as: merchants; retailers; accountants and tax preparers; attorneys engaged in the practice of law; persons regulated by the Securities and Exchange Commission; persons regulated by the Commodity Futures Trading Commission; and auto dealers. The rule interprets these exemptions as not applying to states or state regulatory entities because Congress applied these carve-outs only to the "Bureau" or "Director." Thus, according to the CFPB, states can use the CFPA to pursue enforcement actions "against a broader cross-section of companies and individuals" than even the CFPB itself.
- **States have authority to enforce the CFPA and other federal financial protection laws.** The CFPA authorizes states to bring civil actions against

“covered persons” or “service providers” that violate: (1) the CFPA (*e.g.*, by engaging in unfair, deceptive, or abusive acts or practices); (2) any of the 18 enumerated consumer laws listed within the CFPA (*e.g.*, Equal Credit Opportunity Act, Fair Debt Collection Practices Act, Truth in Lending Act); or (3) any rule or order prescribed by the CFPB, such as consent orders. The interpretive rule notes that the CFPA requires that states consult with the CFPB before initiating any such action.

- **CFPB enforcement actions do not box out state enforcement actions.** Where the CFPB is pursuing enforcement, states can bring coordinated actions or separate actions to stop or remediate harm that is not addressed by the CFPB’s action against the same entity. The CFPA allows such concurrent actions except in a few instances, such as for mortgage loan modification and foreclosure rescue services. The CFPB views concurrent state actions as “complementary enforcement activities” that serve to protect consumers at the state level.

The interpretive rule is meaningful more for its timing than its content. States have been empowered to bring civil actions under the CFPA since its passage. Thus, we view this rule as an express call to arms to states to bolster their enforcement efforts – particularly as to: (1) enforcement of Bureau consent orders; and (2) entities that are exempted from the CFPB’s authority.
