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On May 19, 2022, the Consumer Financial Protection Bureau issued an interpretive rule clarifying the scope of states' ability to bring enforcement actions under the Consumer Financial Protection Act (CFPA) against companies and individuals. The interpretive rule lays out the bureau's rationale for concluding that state attorneys general and state regulators enjoy broad authority to enforce the CFPA's consumer protection provisions – and are encouraged to do so even if the CFPB has already brought its own action against the same entity. The interpretative rule highlights the CFPB's position that state attorneys general and state regulators have broader jurisdictional authority than the CFPB, and can enforce federal consumer financial laws against persons otherwise carved out from CFPB oversight by the CFPA.

States' authority under the CFPA

The CFPB's interpretive rule states the following:

- Section 1042 of the CFPA preserves the right of states to bring their own civil actions against entities under the CFPA, which notably codifies the CFPB's unfair, deceptive, and abusive acts or practices (UDAAP) authority.
- The interpretive rule highlights that states can not only bring enforcement actions for UDAAP violations (which the rule notes that states have done), but also can enforce violations of any federal consumer financial law against persons and service providers covered by the CFPA under Section 1036(a)(1)(A).
- This provision mainly permits states to enforce the 18 consumer laws enumerated by the CFPA, such as the Equal Credit Opportunity Act or the Truth in Lending Act, as well as the CFPB's implementing regulations and orders issued thereunder.
- The interpretive opinion also stresses that states' ability to enforce the CFPA is supplemental to the authority they may otherwise have under each enumerated consumer law.
- If the CFPA restricts states' ability to rely on Section 1036(a)(1)(A) to pursue claims against specific entities, such as national banks and federal savings associations, states can instead leverage their own authority under these consumer laws – to the extent authorized – to bring actions against such entities.
- States are not subject to some of the CFPA's limitations on the bureau's enforcement authority against specific entities, including merchants, regulated insurance companies, tax preparers or certain motor vehicle dealers.
- The interpretive rule concludes that Congress applied these limitations in Sections 1027 and 1029 of the CFPA only to the bureau. As a result, states can exercise their authority under the CFPA against a broader cross-section of companies and individuals not otherwise subject to CFPB enforcement.
- In addition, states can independently pursue claims under the CFPA against an entity even if the CFPB is already engaged in its own action against the same entity.
- The interpretive rule also concludes that the CFPA does not limit concurrent statutory enforcement activity by state attorneys general and state regulators, in contrast to the CFPA's limitations on concurrent enforcement by the CFPB and other federal regulators.

There already has been an uptick in state enforcement in conjunction with the CFPB. In April, the CFPB and the New York attorney general jointly filed a complaint against a remittance provider for alleged violations of Regulation E and the CFPA. Upon announcing the lawsuit, CFPB Director Rohit Chopra indicated that the bureau was "already expanding its efforts to ensure states can prosecute consumer financial protection abuses," as well as "deepening [its] law enforcement cooperation with state attorneys general and state financial regulators."

In mid-May, the bureau reminded states and other federal agencies of their responsibility to enforce federal consumer financial laws, and launched a new system to provide guidance by way of "circulars" on how it intends to enforce these laws.

What to expect?

For entities not already under the CFPB's jurisdiction, the interpretive rule is a stark warning that state attorneys

general and state regulators have the green light from the bureau to enforce federal consumer financial laws at the state level, even if the CFPB does not have jurisdiction over certain companies and individuals.

Although the CFPA requires states to consult with the bureau prior to bringing an action to enforce the statute, the interpretive rule makes little reference to this provision. The lack of discussion in the interpretive rule regarding this requirement could be interpreted as further encouragement by the bureau for states to bring independent or concurrent actions against industry participants.

Because the interpretive rule is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act, industry participants should anticipate broader investigations involving a greater number and types of entities, as well as increased coordination between federal and state agencies to begin imminently.

Zealous state attorneys general and state regulators will look at the bureau's new circulars for guidance in their own enforcement actions, including states that have formed their own "mini-CFPBs." We also expect to see renewed and close coordination between the CFPB, states attorneys general, and state regulators moving forward.

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