

Trump CFPB Asserts Narrower Role for State Enforcement of Federal Consumer Law

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On May 15, the Consumer Financial Protection Bureau (CFPB) [issued an interpretive rule](#) that rescinded a May 2022 interpretive rule regarding the extent of states' enforcement authority under Section 1042 of the Consumer Financial Protection Act (CFPA). Noting that the [May 2022 rule's interpretations](#) were "improper," the CFPB asserts in the new rule that states may bring civil actions and other related proceedings **only** under the CFPA (e.g., to enforce the prohibition against unfair, deceptive, or abusive acts or practices), and **not** under other federal consumer financial laws, such as the Truth in Lending Act (TILA), the Equal Credit Opportunity Act or the Fair Credit Reporting Act.

New interpretive rule asserts narrower scope of state enforcement of federal law

Section 1042 of the CFPA authorizes state attorneys general and state regulators to bring a civil action (or other appropriate proceeding) to enforce the provisions of "this title or regulations issued under this title," where "title" means the CFPA.¹ The Biden administration's CFPB issued its interpretive rule to provide three clarifications to Section 1042, which ultimately expanded states' powers to bring enforcement actions under enumerated federal consumer laws. The current CFPB's interpretive rule rejected each of these interpretations, scaling back states' enforcement authority.

1. Scope of state authority

Section 1042 permits state attorneys general and state regulators to bring a civil action to pursue violations of Section 1036(a)(1)(A) of the CFPA, which makes it unlawful for a covered person or service provider to violate any federal consumer financial law. The Biden administration's CFPB interpreted this provision to mean that because Section 1036(a)(1)(A) is a provision of the CFPA, states can use their Section 1042 authority to address violations of **any** federal consumer financial laws by a covered person or a service provider.

In the new interpretive rule, the CFPB rejects this interpretation, noting that a more "appropriate" read is that Section 1042 permits states to bring a civil action to enforce provisions of "this title," which refers to the CFPA only. The new rule makes clear that states may rely on Section 1042 only to enforce the CFPA and its related regulations, but not any other federal consumer financial laws.

The CFPB emphasized that in rescinding the May 2022 interpretive rule, it is not changing, limiting or affecting states' authority to take action authorized by any separate provision of state or federal law.

2. Entities over which states have authority

The former interpretive rule clarified that while the CFPB and the states are both limited in exerting authority over merchants, retailers and sellers of nonfinancial goods or services, other limits on the CFPB's enforcement authority set forth in Sections 1027 and 1029 of the CFPA do not apply to the states.

The new interpretive rule calls this an “incorrect position,” and instead asserts that both the CFPB and the states are limited in exercising authority over the activities and entities listed in Sections 1027 and 1029, which include persons regulated by the Securities and Exchange Commission and real estate brokerage activities. The CFPB notes that if a state were to bring an action against an entity over which the CFPB does not have authority, the “enforcement scheme” that Congress created, under which the CFPB may intervene in a state action as a party, would not be permissible.

3. Permissibility of concurrent actions

The former interpretive rule provided that state attorneys general and regulators may bring concurrent enforcement actions with the CFPB.

In the new interpretive rule, in light of its mandate to “eliminate wasteful, duplicative, and unnecessary regulatory and enforcement activity,” the CFPB notes that the agency and the states should not in fact take parallel enforcement actions against the same entity.

What’s next?

The rescission of the interpretive rule follows this CFPB’s push to narrow the scope of its statutory interpretations and generally to [slim down the extent of its rulemaking and guidance activities](#).

As the new interpretive rule seeks to narrow states’ powers to enforce federal consumer financial protection laws under the authority of Section 1042 of the CFPA, and given the CFPB’s expressed intention to scale back its own enforcement activities, states may shift their focus to enforcement of their own consumer protection statutes.

Note, however, that we expect states or other interest groups to challenge the withdrawal of the interpretive rule in court, particularly given recent case law, which permitted a coalition of state attorneys general to bring a TILA claim against a nonbank finance company under Section 1042, without the CFPB’s intervening. The US District Court for the Eastern District of Pennsylvania held that, similar to the reasoning in the CFPB’s original interpretive rule, the CFPA prohibits any covered person from violating a federal consumer financial law, and because an enumerated consumer law is within the definition of a federal consumer law, those enumerated laws are part of “this title” and can be enforced by the state regulator.² In addition, certain state licensing or regulatory regimes may provide that a violation of federal law is a violation of state law, effectively giving states another jurisdictional hook to enforce federal laws.

We will continue to track states’ responses to this latest action by the CFPB.

Notes

1. 12 USC 5552(a)(1).
2. *Pennsylvania by Shapiro v. Mariner Fin., LLC*, 711 F. Supp. 3d 463, 483 (E.D. Pa. 2024).

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Key Contacts

Obrea Poindexter Washington, DC	opoindexter@cooley.com +1 202 776 2997
Michelle L. Rogers Washington, DC	mrogers@cooley.com +1 202 776 2227
Elyse Moyer Washington, DC	emoyer@cooley.com +1 202 776 2113

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