

Even As States Step Up, They Can't Fully Fill CFPB's Shoes

By **Tyler Smith and Lucy Bartholomew** (August 5, 2025, 5:02 PM EDT)

The Trump administration's efforts to scale down the Consumer Financial Protection Bureau have resulted in a significant reduction of the agency's federal consumer protection enforcement activity.

In an internal memo sent to CFPB employees in April, the bureau signaled its intention to "shift resources away from enforcement ... that can be done by States."^[1]

This change in direction has prompted calls for state regulators to pick up the slack and expand their consumer financial protection investigative and enforcement activity,^[2] and early signs suggest that some states, including New York and Massachusetts, are doing exactly that.^[3]

Of course, states may only enforce the law where they have authority and jurisdiction to do so. There are at least two sources of authority the states may rely on to try to fill the gap left by a mostly dormant CFPB.

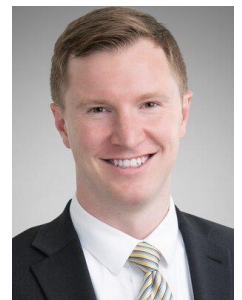
First, states may enforce state statutes banning unfair and deceptive acts or practices, or UDAP, as well as other kinds of state consumer protection statutes, including data privacy laws, usury laws, and money transmission and lending licensing laws.

Second, state attorneys general are empowered by Section 1042 of the Consumer Financial Protection Act "to enforce provisions of this title," i.e., the CFPA, "or regulations issued under this title, and to secure remedies under provisions of this title or remedies otherwise provided under other law."^[4]

But there are also important limitations on states' consumer protection enforcement authority, which hinder the states' ability to step into the CFPB's shoes.

Limits on Section 1042 of the CFPA

First, there are meaningful limits on the scope of states' authority under Section 1042 of the CFPA. At a minimum, Section 1042 gives state attorneys general authority to enforce the CFPA's prohibition on UDAP, which serves as a powerful tool for pursuing conduct that the state attorneys general believe harms, deceives or takes advantage of consumers.



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But CFPB leadership has disagreed on whether Section 1042 gives state attorneys general a broader set of authorities. In 2022, the CFPB, acting under former Director Rohit Chopra, issued an interpretive rule^[5] taking the position that: (1) Section 1042 allows state attorneys general to enforce any of the 18 enumerated consumer protection statutes that the CFPB administers and enforces, including the Equal Credit Opportunity Act, the Truth in Lending Act and the Electronic Fund Transfer Act; and (2) certain limitations on the bureau's enforcement activity — including an exclusion for motor vehicle dealers — do not apply to state attorneys general.^[6]

However, on May 15, the CFPB under acting Director Russell Vought issued a new interpretive rule rescinding the 2022 rule, noting that "[t]hese interpretations were improper."^[7]

Democratic state attorneys general may be unlikely to view the May 15 interpretive rule as controlling, but there are compelling arguments in favor of a more limited reading of Section 1042. For example, Section 1042 allows state attorneys general to enforce "provisions of this title or regulations issued under this title" — that is, the CFPA — but says nothing of the 18 enumerated consumer protection laws the CFPB is responsible for administering.

The most natural reading of that language, in our view, is that state attorneys general may enforce the prohibition on UDAAP, which is contained in the CFPA. If state attorneys general claim enforcement authority over all 18 enumerated consumer protection laws — which are codified in other titles within the U.S. Code, not the CFPA — courts will likely expect to see clear evidence that this was Congress' intention when it promulgated the CFPA, and we have found none.^[8]

For similar reasons, the limits the CFPA imposes on the CFPB's enforcement authority — including, for example, exclusions for sellers of nonfinancial goods or services, real estate brokerage activities, employee benefits and compensation plans, and auto dealers — should be understood to extend to use of Section 1042 by state attorneys general.^[9]

In establishing these exceptions, Congress carefully delineated the types of industries and private actors that it wanted to put beyond the reach of the CFPA. Absent evidence of express congressional purpose to the contrary, Section 1042's grant of authority for state attorneys general to enforce the "provisions of this title" should be understood to incorporate all of the limitations contained within the CFPA.

Jurisdictional Limitations on State Consumer Protection Laws

Second, states are limited in the extent to which they may apply their state consumer protection laws to conduct that occurs, or entities that are domiciled, out of state.

As of 2020, courts in 20 states — including California and New York — applied a presumption against extraterritoriality to determine the geographic scope of their state's statutes, which means that courts in those states will not read a state statute to apply extraterritorially absent some clear expression of legislative intent.^[10]

State consumer protection authority is also cabined by the personal jurisdiction requirement — that is, state authorities cannot apply state or federal consumer protection laws to conduct that lacks sufficient contacts or connections with the forum state.

An active New York attorney general, for example, cannot reach conduct that occurs purely in Kansas, absent some clear connection to New York. These geographic limitations prevent individual states from

policing conduct in this space as comprehensively as the CFPB, and will likely result in inconsistent, patchwork enforcement across states.

Preemption

Finally, unlike the CFPB, states are limited in the extent to which they may apply state laws or regulations to national banks and their subsidiaries.

Under the Dodd-Frank Act, state consumer financial laws are preempted to the extent that (1) the application of the law would have a discriminatory effect on a national bank, in comparison with the effect of the law on a bank chartered by that state; and (2) the law "prevents or significantly interferes with the exercise by the national bank of its powers."^[11]

After the U.S. Supreme Court's 2024 decision in *Cantero v. Bank of America NA* — which instructed courts to "make a practical assessment of the nature and degree of the interference caused by a state law," and refused to draw a bright line that would govern preemption analyses — states may be more willing to test the boundaries of national bank preemption.

But *Cantero* merely sought to more clearly articulate the existing preemption standard, and to provide courts greater direction on how to apply it. Accordingly, national bank preemption remains an obstacle to state regulation of national banks.^[12]

Although we expect the states to play a bigger role in consumer protection enforcement and litigation over the next three and a half years, they cannot step into the shoes of the CFPB. Limits on states' authority in this space may provide companies and individuals subject to state attorney general investigations an opportunity to push back against enforcement overreach.

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[1] See Mark R. Paoletta, 2025 Supervision and Enforcement Priorities, 1 (Apr. 16, 2025).

[2] On the eve of President Trump's inauguration, former Director Chopra published an article with the Bureau's then-General Counsel, Seth Frotman, arguing that the states may wish to "utilize [their consumer protection enforcement] tool[s] even more in the coming years." Rohit Chopra & Seth Frotman, *State Enforcement as a Federal Legislation Tool*, 62 Harv. J. on Legis. 1 (2025). Frotman also published a roadmap for strengthening state-level consumer protections in January and, in May, co-authored an article with Sam Levine, the former Director of the FTC's Bureau of Consumer Protection, calling for states to "step up to protect their citizens." Seth Frotman and Brian Shearer, *Strengthening State-Level Consumer Protections*, Consumer Financial Protection Bureau, <https://www.consumerfinance.gov/about-us/blog/strengthening-state-level-consumer-protections/>; Samuel Levine & Seth Frotman, *NY Must Step Up To Protect Consumers as Feds Step Back*, Syracuse.com (May 29, 2025), <https://www.syracuse.com/opinion/2025/05/ny-must-step-up-to-protect-consumers-as-feds-step-back-guest-opinion-by-samuel-levine-seth-frotman.html>.

[3] For example, in May, New York's Attorney General, Letitia James, filed a suit against Capital One that is effectively a carbon copy of a suit the CFPB filed in January, but dismissed in February. Attorney General James Sues Capital One for Bait-and-Switch Tactics That Cost Customers Millions, New York State Attorney General's Office, <https://ag.ny.gov/press-release/2025/attorney-general-james-sues-capital-one-bait-and-switch-tactics-cost-customers>; Kate Berry, CFPB drops lawsuit against Capital One, American Banker, <https://www.americanbanker.com/news/cfpb-drops-lawsuit-against-capital-one>. And, on June 18, New York's legislature passed the FAIR Business Practices Act, which, if signed into law, would expand New York's UDAP statute to cover "unfair" and "abusive" business acts, in addition to "deceptive" business acts. Attorney General James Applauds Passage of Legislation to Protect Consumers and Small Businesses, New York State Attorney General's Office, <https://ag.ny.gov/press-release/2025/attorney-general-james-applauds-passage-legislation-protect-consumers-and-small>. In January, Massachusetts passed a law that expands the licensing and consumer protection requirements of the state's money transmission statute. Governor Healey Signs Money Transmission Bill that Protects Consumers Using Payment Apps like Venmo and PayPal, Massachusetts State Attorney General's Office, <https://www.mass.gov/news/governor-healey-signs-money-transmission-bill-that-protects-consumers-using-payment-apps-like-venmo-and-paypal>. And, in March, Massachusetts' Attorney General, Andrea Joy Campbell, announced the adoption of rules regulating fee disclosures and banning "junk fees," mirroring language coined by the CFPB under former Director Chopra. AG Campbell Releases "Junk Fee" Regulations To Help Consumers Avoid Unnecessary Costs, Massachusetts State Attorney General's Office, <https://www.mass.gov/news/ag-campbell-releases-junk-fee-regulations-to-help-consumers-avoid-unnecessary-costs>.

[4] 12 U.S.C. § 5552.

[5] Authority of States To Enforce the Consumer Financial Protection Act of 2010, 87 Fed. Reg. 31940 (May 26, 2022).

[6] The interpretive letter also suggested that section 1042 does not restrict states from bringing concurrent enforcement actions with the CFPB, but that is unlikely to be particularly relevant given the CFPB's posture.

[7] Authority of States To Enforce the Consumer Financial Protection Act of 2010; Rescission, 90 Fed. Reg. 20,565 (May 15, 2025).

[8] In support of its broader reading of Section 1042, the CFPB's 2022 interpretive letter pointed to section 1036(a)(1)(A) of the CFPA, which declares it unlawful for any "covered person" or "service provider" to "offer or provide to a consumer any financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law." 87 Fed. Reg. 31941 (May 26, 2022). Because the term "Federal consumer financial law" is defined to include the 18 enumerated consumer protection statutes, the CFPB argued that the CFPA gives states express authority to enforce those statutes. But "Congress does not hide elephants in mouseholes." *Whitman v. Am. Trucking Associations*, 531 U.S. 457, 468 (2001) (cleaned up). Under this reading, two words—"this" and "title"—give the states authority to enforce the entire body of federal consumer protection legislation. These 18 statutes regulate an extraordinarily broad range of products and services and impose wide-ranging legal obligations on covered entities. In our view, a court will expect stronger evidence of congressional purpose before reading the CFPA in this way.

[9] See 12 U.S.C. §§ 5517, 5519.

[10] William S. Dodge, Presumptions Against Extraterritoriality in State Law, 53 U.C. Davis L. Rev. 1389, 1405 (2020), available at https://lawreview.law.ucdavis.edu/sites/g/files/dgvnsk15026/files/media/documents/53-3_Dodge.pdf.

[11] 12 U.S.C. § 25b(b)(1).

[12] While *Cuomo v. Clearing House Ass'n, L.L.C.* stands for the proposition that states may enforce their laws against national banks, that is only true to the extent that the relevant law "is not substantively pre-empted with respect to national banks." 557 U.S. 519, 550 (2009).