

Alert | Financial Services Litigation



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CFPB Guidance and State Consumer Protection: 2025 Considerations

Go-To Guide

- States may increase consumer protection enforcement as the CFPB potentially shifts focus under the new administration in 2025.
- Following CFPB recommendations, states might consider updating laws on fees, financial data privacy, and consumer lawsuits.
- Companies will benefit from staying informed about both federal and state consumer protection laws and their potential changes.

To get ahead of potential staffing and priority changes under the new administration, on Jan. 14, 2025, the Consumer Financial Protection Bureau (CFPB) issued guidance to state attorneys general and other regulatory bodies regarding consumer protection enforcement.

In two reports issued on the same day, the CFPB provided guidance as to what federal consumer protection laws other agencies or private citizens could enforce, and urged states to strengthen their consumer protection laws. The CFPB's guidance follows an April 2024 FTC report, "Working Together to Protect Consumers: A Study and Recommendations on FTC Collaboration with the State Attorneys General," which describes information-sharing tools and practices relating to consumer complaints to aid investigations. The CFPB guidance contained model language to ban "hidden" fees, adopt financial data

privacy safeguards, and ease the process for impacted consumer lawsuits. The CFPB recommended that states expand their regulators' investigative tools and enforcement remedies and modernize the standards of fair dealing using existing models in state and federal law.

In particular, the CFPB suggested that states:

- Ban “abusive” practices in state law to end schemes that obscure product features or use power imbalances to gain advantage and increase costs, like the Consumer Financial Protection Act.
- Ensure that attorneys general have adequate investigatory authorities and can pursue remedies that protect consumers and make them whole.
- Remove evidentiary hurdles that frustrate private rights of action, such as requiring plaintiffs to prove individual monetary harm.
- Ensure that consumer protection law also protects businesses.
- Authorize forms of private enforcement that can remain viable in the face of forced arbitration.
- Ban common schemes in the modern economy, including junk fees and abuse of personal data.

Since 2018, there has been an increase in federal-state partnerships for consumer financial cases, investigations, and enforcement actions. This may continue with a potential shift from CFPB to state-led actions. For example, in the case of *Federal Trade Commission; Office of the Maryland Attorney General, Consumer Protection Division v. Lindsay Chevrolet LLC et al.*, the Office of the Maryland Attorney General, Consumer Protection Division is seeking to enjoin defendants from engaging in alleged unfair or deceptive trade practices in the course of offering and selling vehicles to consumers in the Maryland, and to obtain relief for those consumers victimized by the alleged unlawful practices.

Similarly, in *Federal Trade Commission et al. v. Coulter Motor Company LLC et al.*, the FTC and Arizona brought an action to obtain permanent injunctions, civil penalties, restitution, and other equitable relief against defendants for allegedly luring consumers into their dealerships with low advertised prices for new and used vehicles, which are higher than advertised due to surprise market adjustments, fees, and other costs.

Partnerships between state attorneys general in pursuing enforcement actions may also increase. In 2017, during the first Trump administration, several states, led by New York and California, agreed to team up on consumer protection and financial services cases that the federal government chose not to pursue. Statements that Democratic attorneys general released after the election indicate that they may follow a similar path.

The CFPB's message to the consumer financial industry is clear - state investigations may increase if federal enforcement decreases. Companies should be familiar with (1) existing consumer protection laws, (2) legislative action to provide more consumer-friendly laws, and (3) active and ongoing joint investigations between the state and federal consumer agencies. As states react to changing federal priorities under the new administration, reviewing any changes at the state consumer protection level may help to ensure companies are aware of applicable state laws and potentially avoid enforcement actions.

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