

Today's webinar will start shortly....

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The screenshot shows the Venable website page for the Consumer Financial Protection Bureau Task Force. The page features a navigation bar with links to 'about venable', 'alumni', 'international', 'professionals', 'services', 'news & insights', and 'careers'. The main content area is titled 'CONSUMER FINANCIAL PROTECTION BUREAU TASK FORCE' and includes a sub-header 'an experienced team guiding you through uncharted waters'. The page also features a 'RELATED SERVICES' section, a 'TASK FORCE QUICK FACTS' section, and an 'HONORS AND AWARDS' section. A 'Top Ranked CHAMBERS USA 2015' badge is visible in the bottom right corner of the page.

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DATE	TITLE
January 11, 2016	Consumer Financial Protection Take-up: Prepare for 2016: Jonathan L. Porroan, AI About Advertising Law
January 2016	Pop Quiz: Regulatory Issues for Colleges Offering Financial Products to Students: Andrew E. Sigart, Jeffrey S. Tansik, Peter S. Frachette
December 10, 2015	AML Considerations for the Fintech Industry: D. E. Wilson, Jr., Andrew E. Sigart, Financial Services Alert
December 2, 2015	CFPB Announces 2016 Exemption Thresholds for Higher Priced Mortgages, Truth in Lending, and Consumer Lending: Alyson S. Baker, Andy Arzouli, Peter S. Frachette, CFPB
December 2, 2015	CFPB Complaint Snapshot Highlights Bank Accounts: Alyson S. Baker, Andy Arzouli, Peter S. Frachette, CFPB



VENABLE

**The Present & Future Role of State
Attorneys General in Consumer Financial
Services Regulation & Enforcement**

Friday, December 9, 2016

Hon. Mark L. Pryor

Kevin L. Turner

Allyson B. Baker

Jonathan L. Pompan

Meredith L. Boylan

Alexandra Megaris



Welcome to Today's Webinar

This presentation is being recorded today and will be available at www.venable.com/cfpb/publications and on [YouTube](#) later this week.

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A code will be announced at the end of the webinar for those attending, and a certificate will be sent via email to participants.



Themes We Will Cover Today

- The types of laws and regulations enforced by state attorneys general;
- The role of consumer complaints and other factors that influence investigation priorities;
- What to expect during individual, multistate, and federal co-investigations and litigation, including negotiating the scope of the inquiry, the settlement process, and litigation considerations;
- How state attorneys general exchange information and coordinate with state regulators and federal agencies (e.g., CFPB, FTC, banking agencies); and
- Ways to minimize enforcement overreach, including education and outreach efforts and voluntary industry self-regulation initiatives.

Today's Venable Panelists



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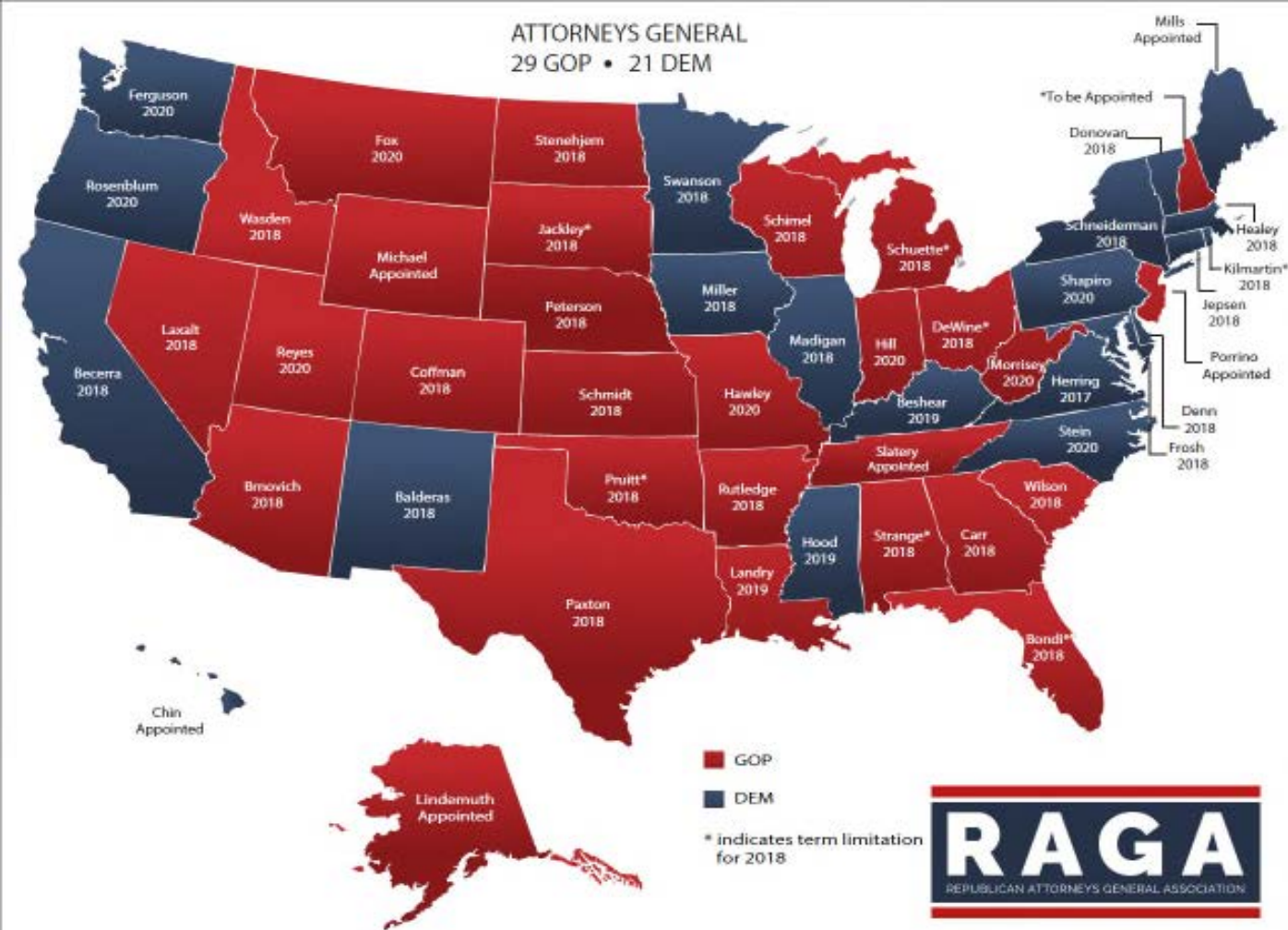
The Role of the State Attorney General



What Do the State Attorneys General Do?

- As the chief legal officer of the states, commonwealths, and territories of the United States, the attorneys general serve as counselors to their legislatures and state agencies and as the "People's Lawyer" for all citizens.
- Primary responsibilities include enforcement of criminal and consumer protection laws.
- The majority of AGs are elected officeholders in all states, commonwealths, and territories; the rest are appointed.
- Major trends over the last decade:
 - Shared enforcement authority between state and federal agencies over many areas traditionally considered the exclusive responsibility of either the states or federal government.
 - Increasingly cooperative working relationships among state AGs and between AGs and their federal counterparts.
 - Due to decreased productivity on federal side, state AGs are more active in pursuing policy agendas.

Who Are the State Attorneys General?





Who's Who in the Office of the Attorney General

- The Attorney General
- Senior staff
- Career staff / line attorneys

Proactive Outreach & Engagement

- Companies that are highly regulated and have frequent and/or high-impact consumer interactions should consider a strategy for proactively engaging the AG offices in states where they are headquartered and located, and, depending on individual facts and circumstances, where they do business.
- There are many ways to implement such a strategy, including
 - attendance and participation in NAGA, DAGA, RAGA, and CWAG
 - one-on-one outreach efforts, such as visiting with AG and staff
- Keep in mind that interactions with government officials are regulated by state ethics laws and regulations so be sure to clear such engagement with counsel.



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Consumer Protection Committee

Mission Statement

The Consumer Protection Committee's mission is to assist and enable attorneys general concerning consumer protection issues and matters by providing information, communication and support; to facilitate cooperation among the various attorneys general Consumer Protection Divisions through open dialogue and communication; to plan, organize and conduct training and annual seminars for the exchange of ideas and information on matters relevant to consumer protection divisions and their issues; and to promote the development of effective consumer protection programs and education for the protection of citizens and increasing consumer awareness.

www.naag.org
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The Laws and Regulations Enforced by State Attorneys General



The Laws Enforced by State Attorneys General

- State AGs are the chief legal officers of their states and have the authority to bring actions against companies operating in their states on behalf of consumers or the public in almost any area of law; and
- Many federal statutes authorize state AGs to enforce the federal statute (or portions thereof).
 - Under Dodd-Frank Section 1042, a state AG or state regulator is authorized to bring a civil action to enforce the Consumer Financial Protection Act.



Consumer Protection Laws That Are Enforced by State AGs

- AGs investigate and bring actions under their states' respective unfair, deceptive, and abusive practices laws ("UDAP laws").
- UDAP laws tend to broadly prohibit "deceptive" or "unconscionable" acts against consumers.
- Most states also have specific consumer protection laws regulating:
 - Debt collection
 - Credit reporting
 - Credit services
 - Lending and loan servicing
 - Debt relief services
 - Money transmission
 - Often more....

Highly Active Enforcement Agenda; Expected to Increase in New Federal Climate

A.G. Schneiderman Announces Additional \$3.7m Settlement To Provide Financial Relief For Rome Finance Company Victims

To Receive Partial Victim Compensation Exceeding \$3.7 Million

State of Connecticut | Governor Daniel P. Malloy | Search

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STATE OF CONNECTICUT
ATTORNEY GENERAL GEORGE JEPSEN

February 5, 2016

AG Jepsen: Connecticut Joins \$470 Million Joint State-Federal Settlement with HSBC to Address Mortgage Servicing and Foreclosure Abuses



The Official Website of the Attorney General of Massachusetts

Attorney General Maura Healey

Home > News and Updates > Press Releases > 2016 Press Releases > AG Secures \$2.4 Million from Student Loan Servicer

MAURA HEALEY
ATTORNEY GENERAL

For Immediate Release - November 22, 2016

AG Healey Secures \$2.4 Million, Significant Policy Reforms in Major Settlement with Student Loan Servicer

ACS Failed to Implement Income-Based Repayment Plans, Violated Debt Collection Laws and Overcharged Student Borrowers; Payment Includes Restitution for Massachusetts

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Attorney General Kamala D. Harris, 49 Other Attorneys General, Reach \$95 Million Settlement with USA Discounters for Targeting Military Servicemembers with Deceptive Marketing and Illegal Debt Collection Practices

Friday, September 30, 2016
Contact: (415) 703-5837, agpressoffice@doj.ca.gov



The Role of Consumer Complaints and Other Factors That Influence Investigation Priorities

What Could Trigger a State AG Investigation?





Role of Consumer Complaints


- Each AG office has a dedicated team of staff responsible for receiving, investigating, and addressing consumer complaints.
- The offices track and analyze complaint volumes and trends.
- High volumes of complaints, poor complaint handling by companies, and/or nature of the complaints have significant impact on an AG office's enforcement priorities.




What to Expect During Investigations and Litigation



What to Expect When Under Investigation

- 
- Receipt of CID or civil subpoena
 - Assessing its scope
 - Weighing options

- 
- Engaging with enforcement staff to limit burden and understand basis for investigation

- 
- Record hold
 - ESI considerations
 - Collection, review, and production of documents

Preparing the Defense





Strategies for Navigating a State Attorney General Investigation

- Know the state's open record laws and negotiate a confidentiality agreement with the AG office that will protect sensitive company information and documents. Not all states are identical, and how states may share such information with each other and third parties, including private plaintiff's attorneys, should be considered at the outset.
- Treat every AG inquiry as if it is litigation – preserve documents (paper, electronic, and emails) from the moment there is an inquiry. A document hold should be sent out to all those who may have responsive documents, as well as the company's IT department.
- Negotiate the scope of the inquiry, and seek to focus on the areas of concern. If possible, sync multiple state inquiries (and other requests) and consider requesting a formal multistate inquiry, if multiple states are investigating at the same time.
- Maintain open communication with the AG office on items such as document collection, ESI issues, custodians, search terms (many AG offices question the use of computer-assisted review), document review, and timelines for completing production of documents.
- Many AG offices expect a privilege log to be prepared and provided at the end of the document production.
- Be responsive. This can help narrow the inquiry and assist in lowering the cost of defending against the investigation and ultimately reducing the cost of the inquiry and settlement.
- If your company receives an inquiry from an AG, either formally or informally, you should obtain counsel that is experienced with AG offices. Your counsel can ensure responsiveness and help narrow the scope of the inquiry.



Strategies for Avoiding a State Attorney General Inquiry

- Stay in compliance. Knowing the laws and potential risks and penalties can avoid the time and money spent on a state attorney general investigation. For example, in many states the penalties for violating the UDAP law are “per violation.” In some instances, UDAP penalties are increased if the deception is against an at-risk population, such as the elderly, debtors, and others.
- Complaints should be taken seriously and resolved immediately. State attorneys general do the same and so should you.
 - AGs often talk to AGs in other states to see if there is a trend in consumer complaints and, if so, whether a multi-state investigation can be encouraged.
 - An AG is more likely to take action if there are numerous consumer complaints about a company.
 - Multistate investigations can lead to significant costs for a company when it has to defend and settle an investigation. Settlements are often based on per-unit sales in each state – which can be costly.
- Actively engage and educate regulators.
- Be responsive. State attorneys general often make an informal inquiry before issuing a subpoena. An open, honest conversation with your outside counsel and company executives may resolve the issue.

Managing & Enhancing Compliance



Questions and Closing Observations



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Consumer Financial Services 2017 Outlook
January 24, 2017, 2-3:30 pm ET

Members of Venable's Consumer Financial Services Practice Group will discuss the outlook for consumer financial services regulatory and litigation developments and trends for 2017. CLE available.

Visit www.venable.com for details and to register today.