Mini-CFPBs – What Increased Regulation, Enforcement, and Supervision by State Agencies Mean for the Financial Services Industry

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Mini-CFPBs: An Overview

- The CFPB's deregulatory agenda has states worried about consumer financial protection.
- States are filling the void by:
  - Empowering and focusing existent agencies and law enforcers
  - Creating wholly new agencies with broad jurisdiction and authority
- Some examples of states upping their financial protection environment:
  - New York restructured and refocused pre-existing divisions.
  - California has proposed new legislation and a retooled agency that restructures California's existing consumer financial protection regime.
  - Pennsylvania, New Jersey, and Maryland have all created dedicated departments or otherwise refocused existing resources.

Tools Available to the States

- Enforcement:
  - State consumer financial protection laws (which can be more stringent than federal requirements).
  - Section 1042 of the Dodd-Frank Act allows state attorneys general to conduct enforcement actions under the CFPB's "unfair, deceptive, or abusive acts or practices" (UDAAP) prohibitions.
  - Truth in Lending Act (TILA), Real Estate Settlement Procedures Act (RESPA), and the Fair Credit Reporting Act (FCRA) give state attorneys general or state regulators direct enforcement authority.
- Licensing requirements:
  - Allow states to review and control which companies do business in the state.
  - Licensing and examination requirements could apply to new/previously unregulated industries.
- Supervisory examinations:
  - States can supervise licensees and require changes in products and practices.

What Issues Will States Focus On?

- State consumer finance enforcement activity has focused on a variety of issues, but some recent trends include:
  - UDAP, UDAAP, and unfair trade practices
  - Predatory lending and usury-related issues
  - Unlicensed activity
  - Mortgage servicing and collections
- During the COVID-19 pandemic and recovery period, compliance issues, unfairness, and fraud related to relief efforts and recovery-oriented financial products will likely be at the forefront.

Mini-CFPB: California

- In March 2018, California legislators announced that they were considering establishing a new agency, led by the Department of Business Oversight Commissioner, Manuel P. Alvarez, a former CFPB enforcement attorney.
- In January 2020, California Governor Newsom formally proposed the California Consumer Financial Protection Law, which would rename the DBO as the Department of Financial Protection and Innovation, and provide the revamped agency authority to oversee industries that are currently not regulated by the state.
- The governor's proposal aims to accomplish the following goals:
  - License and examine new consumer financial industry areas, in part via new authority over debt collectors, credit reporting agencies, and fintech companies.
  - Research market developments of consumer financial products and services to support evidence-based policies.
  - Offer consumer services targeting financial empowerment and education for older Americans, students, military service members, and recent immigrants.
  - Prevent unfair, deceptive, and abusive practices by examining, investigating, and supervising unregulated products to protect California consumers.

Mini-CFPB: New York

- In May 2019, New York's Department of Financial Services (NYDFS) created a new "Consumer Protection and Financial Enforcement Division" by merging its Enforcement & Financial Frauds and Consumer Protection Divisions.
- In January 2020, NYDFS hired Leandra English, former CFPB Deputy Director, to be a special policy advisor to the Superintendent of Financial Services.
- New York Governor Andrew Cuomo has also proposed legislative changes that would give DFS additional authority to require debt collectors operating in the state to apply for a license, which DFS could revoke for improper conduct. The legislative proposal would also codify under New York law a Federal Trade Commission rule prohibiting confessions of judgment.
- The proposed legislation would bring any activity subject to CFPB enforcement within the purview of DFS's supervision and enforcement.

Other States Focus on Consumer Protection

- **New Jersey**: In 2018, the governor appointed new leadership to the Division of Consumer Affairs, the lead state agency charged with enforcing the state Consumer Fraud Act and overseeing numerous state licensing boards, as part of ongoing state efforts to create a "state-level CFPB."
- **Maryland**: The Maryland legislature passed the Maryland Financial Consumer Protection Act of 2018 to expand the pre-existing Maryland Consumer Protection Act to include "abusive" trade practices, increase civil penalties of the MCPA, and establish a Student Loan Ombudsman within the Office of the Commissioner of Financial Regulation. The statute also requires appropriation of at least $1 million for the purpose of enforcing consumer protection laws.
- **Pennsylvania**: In 2017, Attorney General Josh Shapiro formed a Bureau of Consumer Protection within the PA AG's office, led by CFPB alum Nicholas Smyth.
- **Virginia**: In 2016, Attorney General Mark Herring added a predatory lending enforcement unit to the AG Office's Consumer Protection Unit to investigate violations of state and federal consumer lending statutes, including those relating to payday loans, consumer finance loans, and online loans.

Consumer Protection and "Mini-CFPBs" During and After the COVID-19 Public Health Crisis

- In the near term, focus on the COVID-19 pandemic will likely slow down or pause more complicated and expensive initiatives.
- Stresses from the public health crisis will likely result in a variety of consumer financial protection issues, related to borrower delinquencies, provision of borrower relief, and financial products focused on post-crisis consumers.
- State governments, agencies, and attorneys general may find an increased need for dedicated consumer financial protection resources moving forward.

What Does This Mean for Financial Services Companies?

- Increased attention on the industry from state AGs.
- Additional and more substantive state examinations of financial services companies.
- New licensing and regulations for previously unregulated business in the financial services space.

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What Steps Should Financial Services Companies Take Now?

- Step up resources and attention to regulatory compliance to ensure that state-level compliance can be adequately addressed.
- Review and enhance overall compliance management systems.
- Ensure that consumer complaint management accurately identifies risks in a timely manner.
- Increase government affairs and engagement with states developing new statutory and regulatory initiatives along the “mini-CFPB” model.

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Questions?

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