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an independent regulatory advisory firm

VENABLE

# Consumer Finance Enforcement Activity in a New Administration

May 3, 2017

Moderator:

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Panelists:

**Meredith L. Boylan**, Esq., Counsel, Venable LLP

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# Agenda

- 2:00pm - 2:05pm** Introduction
- 2:05pm - 2:15pm** The impact of the current political climate on enforcement actions
- 2:15pm - 2:25pm** Interacting, negotiating, and litigating with the CFPB
- 2:25pm - 2:35pm** Tips for managing risk due to enforcement investigations and actions
- 2:35pm - 2:45pm** Crisis management strategies
- 2:45pm - 2:55pm** CFPB, State Attorneys General, other enforcement agency developments, and what's next
- 2:55pm - 3:05pm** New administration: prospects for reform and leadership changes
- 3:05pm - 3:15pm** Examination: lessons learned and preparing for the future
- 3:15pm - 3:30pm** Questions



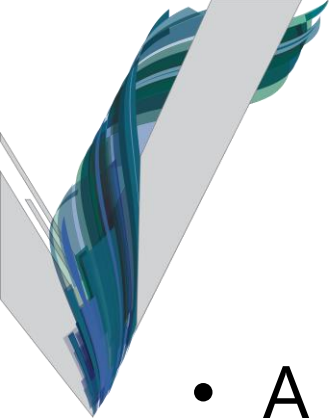
# Key Consumer Protection Themes in the Current Political Climate – Part 1

- Perceived uncertainty about the scope of federal activity in consumer protection
  - Leadership, organizational structure, budget, and authority of the Consumer Financial Protection Bureau (CFPB)
  - Pending rulemakings: Arbitration, Small Dollar Lending, and Debt Collection
  - Fair lending and specifically the use of disparate impact theory
- Changes in the political environment and even potential curtailing of CFPB’s legal authorities are not the same as changes in compliance mandates applicable to consumer finance firms
- Emphasis in oversight on consumer outcomes, rather than compliance processes alone, likely to remain
- In the eventuality of a less active CFPB, expect increased role of states (attorneys general, financial services regulators, and legislatures) and increased scrutiny by federal prudential regulators (Fed, OCC, FDIC) in contexts such as mergers and acquisitions and new product development



# Key Consumer Protection Themes in the Current Political Climate – Part 2

- In markets where CFPB reforms are not yet in place, such as short-term lending, firms need to balance reality of altered competitive conditions against accrued regulatory risk
- Ongoing questions around the role of partner and sponsor banks and the related third-party vendor management requirements
- Substantive shift in regulatory priorities toward areas of high-touch interface with consumers, such as servicing
- Not clear how agencies will respond to new technologies and business practices in period of regulatory easing
  - Implications of OCC's Special Purpose National Bank Charter Proposal and the FDIC's newfound interest in de novo bank charters
  - Reaction of investors to changed regulatory environment



# Interacting, negotiating, and litigating with the CFPB

- A CID is a starting point for negotiations.
  - Regulators tend to initially draft their requests extremely broadly.
- Work to narrow the CID by determining what the Bureau really cares about.
- Where possible, cultivate a collaborative working relationship with the Bureau, rather than purely combative.
- But be prepared to be firm and push back on what you really care about (i.e., pick your battles and back them up).
- Expect the unexpected.



# Managing Risk and Crises

- Be proactive, not reactive.
- Know your industry; understand regulatory trends.
- At the first whiff of enforcement activity, analyze potential claims and defenses.
- Identify critical team members.
- Know where the information is and how to compile it.
- Anticipate concerns due to regulatory scrutiny; be prepared to counter allegations and explain compliance management systems.

# Uptick in State Attorneys General and Regulatory Agency Investigations and Enforcement

## 'First line of defense': Democratic attorneys general vow to fight Trump in court



Lawrence Hurley, Reuters

Nov. 18, 2016, 6:37 AM 10,259

On consumer protection, states can both challenge any Trump efforts to loosen regulations and ramp up their own enforcement efforts, said Doug Gansler, a Democrat who served as Maryland's attorney general from 2007 to 2015.

"If the federal government abdicates that responsibility, the more aggressive and progressive state attorneys general will fill that vacuum," he said.

Those state agencies have wide latitude to take action, particularly against nonbank financial services firms like debt collectors, independent mortgage servicers, consumer credit reporting bureaus and even broker-dealers.

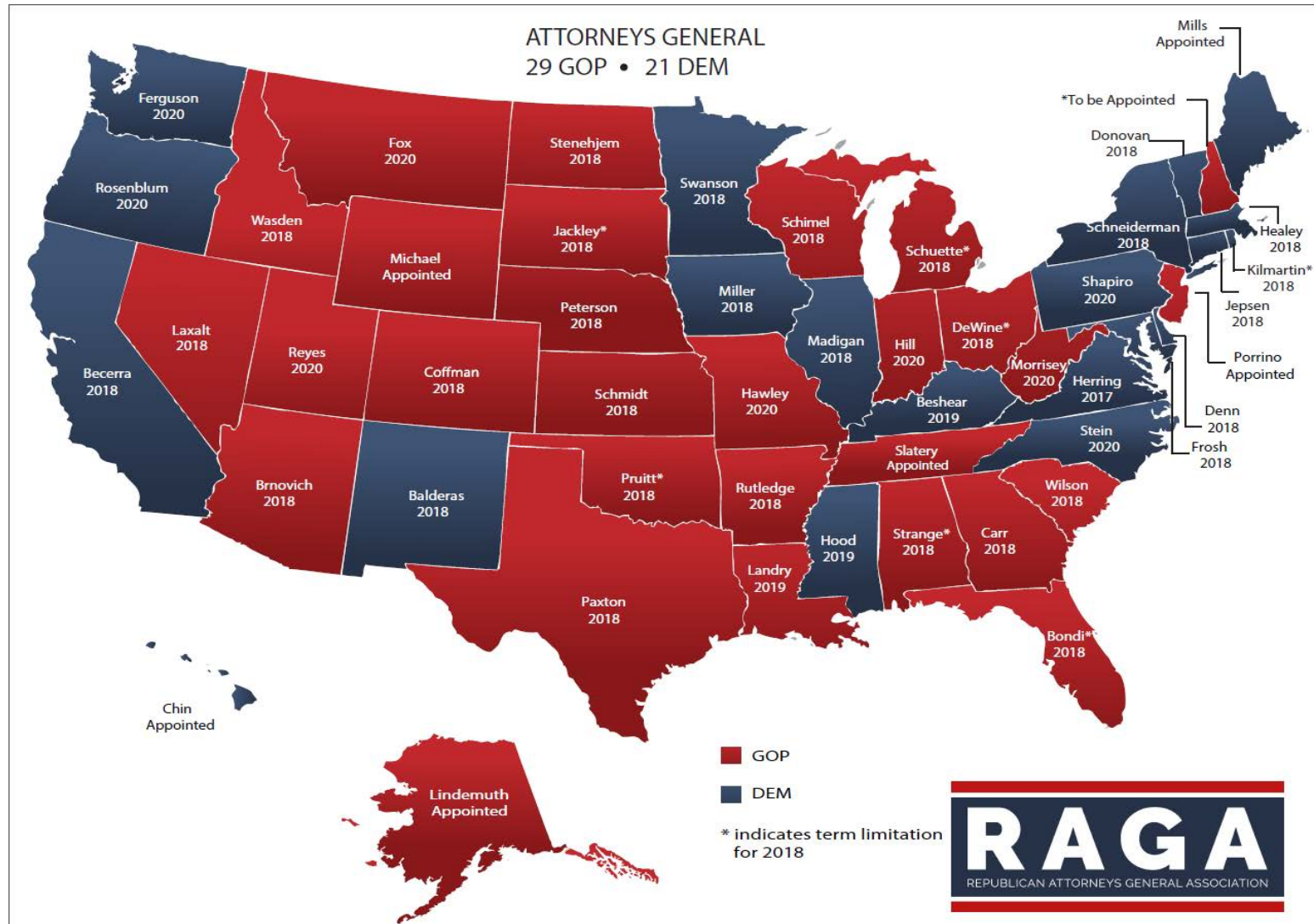
Several federal laws, including the Truth In Lending Act and the Fair Credit Reporting Act, specifically give state attorneys general enforcement authority. They also have the ability to enforce state consumer protection laws and go after unfair, deceptive acts and practices.



## State Regulators Aim To Fill Trump's Vacuum

By Evan Weinberger

# State Attorneys General







# Consumer Protection Laws Enforced by State AGs and Regulators

- AGs and regulators investigate and bring actions under their states' respective unfair, deceptive, and abusive practices laws (UDAP laws).
- 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...



# CFPB in the New Administration: Business as Usual . . . for Now

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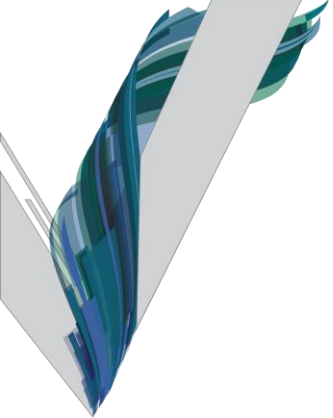
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Cc:  
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Subject: Weekly Message  
Date: Mon Oct 17 2016 11:07:43 EDT

Last week, a panel of the D.C. Circuit Court of Appeals issued its ruling in the PHH enforcement action. Much to-do was made of the ruling in the media and elsewhere, but I want you to know a couple of things. First, the ruling will be appealed further, and the likely estimate is that those appeals will take at least two years to arrive at a final decision in the case. Nothing about this ruling will be final in the interim. Second, even if this outcome were to stand, which it may or may not, the court went out of its way to state, explicitly, that its proposed remedy on the constitutional claim “will not affect the ongoing operations of the CFPB” (p. 10). A short while later, the court repeats that the implications of its ruling are limited: “As before, the CFPB will continue to operate and perform its many critical responsibilities.” (p. 13) The only upshot would be an alteration in the tenure provisions for the Director – that is to say, just for me. So keep yourselves on track just as before, and continue to focus, as always, on doing our work as best we can to deliver value in protecting and supporting consumers.

In the first quarter, actions regarding:

- Student loan debt collection (parallel state AG action)
- Overdraft service fees
- Law firm collection of medical debt
- Credit reporting
- Small-dollar loan marketing and collection



# Lessons Learned & Preparing for the Future

# Questions?

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