States Cannot Replace the CFPB

Only a fully-staffed CFPB can effectively oversee America's large banks, credit bureaus, debt collectors, loan servicers, Big Tech platforms, and thousands of other financial companies.

By Adam Rust, Director of Financial Services

Opponents of the Consumer Financial Protection Bureau (CFPB) argue that state financial enforcement agencies can fulfill the agency's mission, making the CFPB duplicative and unnecessary. However, a closer look at their arguments reveals that the CFPB's unique position in enforcing federal consumer financial laws, supervising large banks, including national banks, and non-banks, and providing uniform consumer protection across all states is irreplaceable. Despite strong partnerships with state attorneys general and other regulators, the CFPB's role cannot be replaced due to structural, legal, operational, and capacity limitations. Weakening or eliminating the CFPB would expose consumers—especially those in states with limited capacity—to greater risks and legal inconsistencies.

States do not have supervisory authority over national banks. Since the 19th century, states could not control the activities of entities created under federal law. This standard means that activities that are "the business of banking" conducted by national banks exist outside the states' supervisory reach. The CFPB can supervise large banks for compliance with 18 consumer financial laws, ensuring that they correct mistakes quickly before consumers are harmed at scale. However, under the current leadership's plans to reduce staff and pull back on work, those problems won't be caught, and harmful practices will fester and grow. Without significant changes to longstanding laws, states cannot step in to replace the CFPB's work with national banks.

States vary in their capacity to implement consumer financial protection laws.
State consumer protection agencies have broad remits. Consumer financial law is usually only one of many areas that state Attorneys General are tasked with overseeing. A state AG is responsible for consumer protection in many markets. The work of an AG includes (but is not limited to) pursuing cases against cable providers, door-to-door salespeople, timeshares, violators of do-not-call lists, car salespeople selling lemon automobiles, fraudulent charitable organizations, ghost gun manufacturers, and price gougers. In addition, state attorneys general act as the law firms for their states. With this diverse mandate, it is unrealistic to expect states to replicate the efforts of the CFPB, particularly with respect to the large institutions – such as banks and Big Tech companies – that the CFPB primarily regulates, and which grow larger every day.

At the end of the Biden Administration, the CFPB had approximately 1,700 employees focused exclusively on consumer financial protection work. This is more professionals with deep subject matter expertise than any state or even collection of states can bring to bear.

In Illinois, a state with a strong tradition of financial regulation, a spokesman recently commented, "While IDFPR (Illinois Department of Financial Protection and Regulation) may be able to shift some priorities, it does not have the staffing or funding to replicate the CFPB." Even in California, a state with a "mini-CFPB," a state legislator has already expressed concerns that the Department of Financial Protection and Innovation cannot fill the void left by the CFPB.

The CFPB is an Enforcement "Force-Multiplier"

The CFPB helps multi-state investigations: When the CFPB joins a multi-state investigation, the impact is felt widely. In the language of business, the CFPB's involvement amplifies the return on investment.

Recently, a group of states created a working group to coordinate their investigation of the student loan servicer Higher Education Loan Authority of the State of Missouri (MOHELA). Six states and the District of Columbia have issued civil investigative demands. Two other states have separate investigations. MOHELA serves borrowers in every state, but because of the CFPB's deprioritization, borrowers in most states will be left without a champion.

Without the CFPB's assistance, states will have to expend more resources. When DOGE attacked the CFPB, it canceled contracts with expert witnesses. Until the CFPB is restored, states will have to pay those costs. According to the Office of the Massachusetts Attorney General, without the help of the CFPB and the Federal Department of Education, the case will have to go to court to obtain documents for discovery. All-in, costs are likely to be much higher.

*Where a person lives should not determine the extent of the financial protections they enjoy***.** This week, the CFPB dropped its case against subprime auto lender Credit Acceptance. The New York Attorney General did not drop out, but the impact of the CFPB's action means borrowers in states outside of New York will no longer stand to benefit if a decision leads to restitution.

The details in the Credit Acceptance complaint show how the new CFPB is giving a pass to corporate wrongdoing. The company hid the cost of borrowing, used aggressive debt collection tactics, financed borrowers it knew could not repay their loans, and utilized repossession to pad its profit margins. It used an algorithm to predict the future cash flows from each contract, including late fees, deficiency judgments, and the terminal value of repossessed cars. Despite evidence it held from the existing complaint, the CFPB's current leadership walked away.

New York will still represent its residents, but Credit Acceptance originates loans through relationships with 60,000 car dealerships nationwide. By itself, New York's work helps people in one state. However, with the addition of the CFPB, the impact could have been fifty times greater.

When the CFPB is involved in an enforcement action, it can offer consumers remedies from its Civil Penalty Fund (CPF). Sometimes, a law-breaking business is also an unprofitable one – or the owners spend the profits before they get caught. In cases where the defendant is bankrupt or otherwise unable to pay penalties, the CFPB can draw from the balance in the fund. The CPF has distributed approximately $1.2 billion to victims who otherwise would not have received relief. Currently, the CFPB is distributing funds from the CPF to consumers harmed in 23 enforcement actions.

As enforcement partners, the National Association of Attorneys General believes history shows how the best outcomes result when states and the federal government work together. In Dodd-Frank, Congress declared that "state initiatives can be an important signal to Congress and Federal regulators of the need for Federal action," - reflecting a view that state and federal enforcement can reinforce each other. The CFPB's specialized subject-matter expertise, combined with the ground-up understanding that state attorneys generally bring to their financial enforcement work, maximizes the core competencies of each most effectively.

*While states have unfair, deceptive acts and practices (UDAP) rules, their scope and power vary widely***.** Some states exempt lenders from their UDAP statutes, and others have text that significantly curtails their powers. UDAP laws should be broad to provide protections for unfair and deceptive practices regardless of whether they reflect a longstanding issue or if the harm has occurred due to a relatively new activity.

Bringing Federal Resources and Unique Authorities to Supervision

The CFPB is the only federal regulator charged with examining large banks for their compliance with eighteen consumer financial protection laws. When the CFPB's new leadership ordered staff to stop working in February, it suspended supervision that no other regulator was authorized to perform. Two weeks ago, when the CFPB outlined plans to revise its priorities for supervision and enforcement, it called for a 50 percent reduction in exams. Because state regulators do not have the authority to supervise national banks, they cannot fill the gap created when the CFPB is idled.

In supervising non-banks and state-chartered banks, multi-state examinations can draw from the work of the CFPB to streamline reviews and data collection.

- The CFPB has worked directly with the Conference of State Bank Supervisors through a "coordination framework" of interested states to conduct supervisory examinations of large non-bank entities jointly regulated by federal and state laws.

- The CFPB assisted the California Department of Financial Protection and Innovation (DFPI) with its examinations of state-chartered banks and mortgage lenders, including several out-of-state state-chartered banks.
- Colorado has worked with the CFPB to conduct joint examinations of student-loan servicers.

States have benefited from the CFPB's insight into complex Big Tech firms, which have deployed new technologies and business models that require unique skills of examiners. The sheer size of these firms makes it challenging for any state to regulate them. Moreover, the CFPB hired a staff of technologists to ensure it could monitor Big Tech payment platforms, algorithmic modelers, chatbots, and other innovations. It shared its expertise with state and local governments. States may be challenged to find workers who can replace them, particularly in areas outside of large tech centers. The cost of tech expertise is also a factor when states investigate Big Tech.

The CFPB has compiled unique resources on corporate recidivists. The CFPB's Repeat Offender Unit (ROU) is a formal clearinghouse of information on companies that have repeatedly violated consumer financial protection laws. States can contribute to the unit and avail themselves of its data. Thus, if a company that has already violated the law in one state attempts similar practices in another, the ROU provides resources to expedite law enforcement's response in the new state.

Supervision for compliance with the Military Lending Act. In 2019, a bipartisan group of attorney generals from 32 states, Puerto Rico and the District of Columbia wrote a letter criticizing the CFPB for failing to use its examination authority to review lenders' compliance with the MLA. In 2015, the Department of Defense estimated that by reducing involuntary separations, the MLA saves the military between $14 million and $133 million each year, and that overall forced preparedness received "non-quantifiable benefits" from reduced stress on servicemembers and their families. As with supervisory work in general, MLA supervision yields outsized returns on government expenses. Given how most servicemembers receive station assignments in multiple states - and in overseas bases as well - states would be far less suitable to replace the CFPB here. There is also a question of capacity: currently more than 2 million people serve in the nation's military. For now, some states can use their UDAP authority to pursue enforcement, but a weakened CFPB will constrain their work. They rely on complaints to identify problems, and enforcement alone is suboptimal because of the time it takes to complete investigations.

State money transmitter licensure powers are not the same as the CFPB's supervisory and enforcement authorities. While many non-banks are regulated by states under money transmitter licensing regimes, the contours of those rules differ from the rules for which the CFPB has authority. States examine money transmitters for their fiscal soundness by verifying they have funds in escrow to cover their obligations. This work is important for many reasons, but its primary focus is not consumer protection.

Bringing Public Understanding of Market Trends
States use CFPB resources to train staff, participate in calls to identify emerging trends and use CFPB data and research to determine priorities. States will have to hire additional research staff to replace CFPB outputs.

The CFPB provides unique databases on home mortgage and small business lending markets. Dodd-Frank allocated responsibility for collecting and disseminating data to fulfill the Home Mortgage Disclosure Act (HMDA). HMDA data serves the needs of many audiences. By permitting the public to understand what is otherwise a very opaque process, HMDA permits community groups to understand how banks allocate credit in the communities where they take deposits. States and counties rely on HMDA to assess the needs of communities when developing fair housing plans. In 1989, Columbia University awarded a Pulitzer Prize to an Atlanta newspaper writer who used HMDA data to show how banks were not making loans to applicants in middle and upper-income black neighborhoods. Researchers rely on the data for its reliability, consistency across time, and broad scope. Several states require state-chartered banks and licensed mortgage lenders to file separate reports on their mortgage lending activity, but otherwise, HMDA is unique.

In March 2023, the CFPB completed its final rule to implement Section 1071 of the Dodd-Frank Act, establishing a new lending database for small business loans. As with HMDA, Section 1071 data will provide insights not previously possible into the availability and quality of credit offered by covered lenders. There is not a state-level analog to Section 1071.

Identifying systemic risk: The CFPB's Office of Financial Risk synthesizes data from across the economy to identify potential vulnerabilities. OFR reviews shadow banking activities such as repurchase agreements (REPOs) that can destabilize banks. It produces five market risk monitor products. The Financial Stability Oversight Committee relies on OFR reporting. States will not step in to replace OFR.

Financial institutions want uniform regulation. Some industries rely on the CFPB's rules to maintain marketplace stability.
*Banks and credit unions prefer uniform rules and regulations across all states***.** National banks vigorously defend the right to be preempted from state laws. They view a single regulatory landscape favorably because having similar regulations across all markets reduces compliance and operational costs.

Responding to separate investigations costs more money. When a financial institution receives civil investigative demands from several states, it may have to hire expensive lawyers to file a response for each.

The CFPB's rules have stabilized mortgage markets.
Lenders receive liability protection by meeting certain conditions for safe underwriting in the CFPB's qualified mortgage rule. In secondary markets, QM loans receive special treatment from Fannie Mae and Freddie Mac. Likewise, investors pay more for the superior liquidity of QM loan securitizations.

When the CFPB's independence was challenged in CFSA v. CFPB, the Mortgage Bankers Association, the National Association of Home Builders, and the National Association of Realtors filed an amicus brief stating that attacks on the CFPB could dramatically destabilize mortgage finance markets.

Direct Responses to Consumers
*No state has developed a resource that can match the value of the CFPB's Consumer Complaint Database***.** The CFPB receives 25,000 complaints per week, and currently, those complaints are going unanswered. Since the passage of Dodd-Frank, the CFPB has forwarded complaints it received to the relevant state Attorneys General. The CFPB shares supervisory authority with states from some banks and non-banks. Likewise, states pass on the complaints they receive to the CFPB. Since 2022, California has forwarded approximately 4,000 complaints to the CFPB.

The CFPB has special resources to fit the unique needs of vulnerable populations.
Servicemembers, veterans, and their households can make use of CFPB publications to understand their Servicemember and Civil Relief Act rights, learn about protections against abuses of the allotment system, and manage their finances while on active duty.

The Office of Financial Protection for Older Americans published educational resources about fraud prevention, financial planning, and help for surviving spouses. The "Money Smart for Older Adults" financial literacy curriculum helps older adults and caregivers avoid financial exploitation. The Office coordinates consumer protection efforts with other federal and state regulators to safeguard the 62 million adults aged 65 and over from fraud and deceptive business practices.

Conclusion
In an amicus brief filed in February, Attorneys General from twenty-two states and the District of Columbia asserted their need for a robust CFPB, writing that, "The loss of CFPB's partnership has concrete and far-reaching implications: from collaborating on supervisory examinations, to sharing of complaints and trend data, to providing training, to partnering on joint investigations and litigations, the CFPB has been a force multiplier for States' consumer-protection efforts."

Title X of Dodd-Frank called for the CFPB to establish a "federal floor," but states are still authorized to add additional substantive protections. When the CFPB's leadership reverses enforcement actions, drops interpretive rules and guidances, and rescinds supervision and enforcement of existing rules, people living in states with weaker regulations become more vulnerable to risky practices.

While they are important partners in the ecosystem of consumer protection, states lack the jurisdiction, resources, staffing, and centralized authority to match the CFPB's national scope. Not only does the CFPB supervise 180 banks and credit unions, collectively holding $21.2 trillion in assets, but it also monitors non-depository mortgage originators and services, private student lenders, payday lenders, and larger participants in consumer reporting, debt collection, student loan servicing, international money transfer, and auto financing markets. It is an enormous body of work. Additionally, it supervises institutions that it has reasonable cause to believe pose risks to consumers. And supervisory activities make up only a portion of its portfolio - it also conducts enforcement, rule writing, market monitoring, consumer response, and education.

The weakening or elimination of the CFPB would diminish enforcement against bad actors and create a fragmented and inequitable financial regulatory system. As demonstrated across multiple sectors—from student loans to subprime auto lending to fintech—the CFPB's partnership enhances the actions of states. Consumers would be at great risk without it.