



Consumer Federation of America

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The Dodd-Frank Act: How States and the Consumer Financial Protection Bureau Will Work Together to Protect Consumers

Background

Oversight of consumer credit and lending is currently shared by an array of federal agencies, including the Federal Reserve, Office of Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Federal Deposit Insurance Corporation (FDIC), and Federal Trade Commission (FTC) and the states (through their attorneys general and banking and credit regulators). In the years prior to the current economic crisis, federal regulators like the OCC and the OTS preempted states from enforcing their own predatory mortgage lending laws against national banks and thrifts, thereby helping to fuel the meltdown. Had state regulators been able to crack down on abusive lending by these institutions, they may have been able to keep local lending problems from fueling the worst economic downturn since the Great Depression.

In July of 2011, authority to stop unfair, abusive and deceptive financial practices and to enforce federal consumer financial protection laws will be shifted from existing federal regulators to the Consumer Financial Protection Bureau (CFPB), which was created as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. At the same time, the Dodd-Frank Act ensures that states will play an important role in reining in abusive lending practices.

Effect of the Dodd-Frank Act on State Attorney General Enforcement Authority:

- State attorneys general have authority to enforce the Dodd-Frank Act's general prohibition against unfair, deceptive, and abusive acts and practices against non-banks and state-chartered financial institutions under their jurisdiction, as well as CFPB regulations that affect these institutions. State attorneys general can also enforce CFPB regulations covering national banks and federal thrifts within limits (see next page), but they cannot enforce the general prohibition against unfair, deceptive, and abusive acts and practices.
- Prior to filing a complaint against these institutions, a state attorney general must provide a copy to the CFPB and the prudential regulator.
- Dodd-Frank codifies the Supreme Court's *Cuomo* decision permitting states to enforce state laws that are not preempted. However, this decision does not permit states to conduct pre-enforcement investigations of national banks or federal thrifts.
- Dodd-Frank confirms the existing authority of state AGs to enforce other federal consumer protection laws that are transferred to the CFPB, such as the Truth in Lending Act and the Fair Credit Reporting Act, to the extent permitted by those laws (including against banks and nonbanks).

Supervision and Enforcement Authority by State Banking and Financial Regulators:

- State financial regulators can enforce both the CFPB's general prohibitions against unfair and deceptive practices and CFPB rules covering state-chartered or licensed entities.
- For state-chartered institutions with over \$10 billion in assets:
 - State regulators have concurrent authority with the CFPB.
 - CFPB is required to coordinate examinations with prudential and state regulators.

- For state-chartered institutions with \$10 billion or less in assets:
 - State regulators have concurrent authority with the appropriate federal banking regulator, but not with the CFPB.
- For non-banks:
 - CFPB has supervisory authority over non-banks, including:
 - mortgage lenders
 - loan modification and foreclosure relief services
 - private student loans
 - payday lenders
 - lenders whose products pose a risk to consumers, and
 - “larger” non-bank lenders, to be defined by the CFPB in consultation with the Federal Trade Commission.
 - CFPB is required to coordinate its efforts regarding these companies with state and prudential regulators.

Relationship between State Laws and CFPB Rules and Regulations:

- Lenders covered by federal consumer financial protection laws must comply with state laws, regulations, and orders except where the state law is inconsistent with the Dodd-Frank Act. If the state law provides additional consumer protections, then the state law is not considered inconsistent.
- When a majority of states have enacted a resolution supporting establishment or modification of a consumer protection regulation, then the CFPB is required to issue a notice of proposed rulemaking with regard to that consumer protection issue.

Preemption of State Consumer Financial Laws:

- State consumer financial laws as they affect national banks are only preempted if:
 - The application of a state law would be discriminatory for national banks, by comparison to its effect on state banks.
 - The state consumer financial law prevents or significantly interferes with the exercise by the national bank of its powers, in accordance with the legal standard in the Supreme Court’s *Barnett* Decision.
 - Another federal law preempts state consumer financial law.
- Any preemption determination may be made by a court or by an OCC regulation or order on a case-by-case basis. Any OCC preemption determination must be based on substantial evidence, made on the record of the proceeding, and support the specific finding regarding preemption. The OCC must first consult with the CFPB and take its views into account when making a determination on preemption.
- The OCC is required to conduct a review through notice and public comment of each preemption determination. It must conduct this review within five years of the preemption determination and then at least once every five years thereafter. The OCC is required to publish a decision on whether to continue, rescind, or amend the preemption determination.

Dodd-Frank Act, State Usury Limits, and Interest Rates Charged by National Banks:

- National banks and federal thrifts can continue to charge interest based on the rate allowed by the state in which the bank or thrift is headquartered, in accordance with the Supreme Court’s *Marquette* decision.
- The CFPB is prohibited from imposing a federal usury limit on lenders, but state usury limits remain in effect.