State Regulators Step Up to Post-Cordray Era Challenge

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Much has been reported on changes at the Consumer Financial Protection Bureau after new leadership took the helm a little over a year ago. We have watched the evolution of the agency's enforcement posture, the repeal of its 2013 indirect auto fair lending bulletin, and an overhaul to its rulemaking agenda.

The auto finance industry is not the only one paying attention. Several states have publicly committed to step forward and step up. We need to look no further than press releases and personnel changes to find states that have pronounced a desire to adopt a more prolific consumer-protection profile.

New Jersey Gov. Paul Murphy, for example, put consumer protection in a post-Richard Cordray era front and center in his election campaign. After his election, the New Jersey attorney general created a leadership position within the Division of Consumer Affairs to fulfill the governor's promise to create a state-level CFPB. The Pennsylvania attorney general followed suit with the creation of a Consumer Financial Protection Unit.

These newly formed divisions have been active in certain aspects of consumer credit and protection, such as student lending and cybersecurity, but they have not yet taken as active an enforcement role in the auto finance industry as some had predicted. As some states are still developing their voices, others are veterans. Let's consider the enforcement and supervision activity in Massachusetts. Long recognized for its active Consumer Protection Division, the Massachusetts attorney general recently entered a consent judgment with a group of auto dealers based on their sales practices. What is noteworthy is what happened next.

The attorney general's investigation found that an independent finance company facilitated the dealership's sale of defective and inoperable vehicles by providing the dealerships with financing despite the dealerships' high default and repossession rates and records of consumer complaints. The finance company agreed to provide $733,925 in debt relief and consumer refunds. We can expect that Massachusetts and other robust law enforcement agencies will continue their efforts regardless of the conversation surrounding the CFPB. What may change in a post-Cordray era is more attention to ancillary products and the securitization of certain motor vehicle secured accounts.

Personnel changes and public enforcement orders reveal most of the picture, but there is more to learn by analyzing letters published by coalitions of states attorneys general weighing in on several CFPB policies. Of particular interest is a Sept. 5, 2018, letter authored by North Carolina Attorney General Josh Stein and signed by 12 other attorneys general, stating that they will not hesitate to uphold the law if the CFPB does not interpret the Equal Credit Opportunity Act to provide for disparate impact liability, including in the auto finance industry.

Lest I suggest that all the enforcement activity will take place at the state level, the Federal Trade Commission continues to make its presence known. And while I expect that state attorneys general and financial services regulatory agencies will capture the focus of our compliance and enforcement attention in 2019, the CFPB still exists and employs a committed workforce. Its consumer protection mission remains, and auto finance companies are still on the receiving end of significant information requests and examination commitments, in addition to this newly energized state activity.

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