

How Calif., NY Could Fill Consumer Finance Regulatory Void

By **Thomas Ward, Anna Burke and Katherine Olson** (April 17, 2025)

While the second Trump administration has been historically active on numerous fronts in its first few months, the Consumer Financial Protection Bureau, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corp. are all awaiting new leadership to be confirmed by the U.S. Senate.

President Donald Trump's nominee to lead the CFPB, former FDIC board member Jonathan McKernan, has committed to leading a bureau that would "cente[r] its regulation on real risks to consumers and ... focu[s] its enforcement on bad actors." [1]

Notably, former CFPB Director Kathy Kraninger provided that same direction to CFPB staff during the first Trump administration, and, by the end of her tenure, CFPB enforcement was running at full steam, recovering more than \$3 billion in consumer redress and penalties, and surpassing the Biden administration in the total number of public enforcement actions.

If the CFPB does step back from consumer financial enforcement, however, who might fill the gap?

While the CFPB is the principal federal regulator responsible for administering, interpreting and enforcing the federal consumer financial laws, including the Consumer Financial Protection Act and the 18 enumerated consumer laws entrusted to the CFPB by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and has unique authorities and abilities not replicated elsewhere, there are numerous regulators that stand ready to step up should the CFPB pull back.

The most likely regulators to fill the gap in consumer financial enforcement may be the state attorneys general and state consumer financial regulators, which are empowered to enforce federal — as well as state — consumer financial laws.

In the last days of the Biden administration, the CFPB released a phalanx of guidance encouraging and arming the states to pursue consumer financial protection enforcement and regulation on their own.

Specifically, the CFPB released a report titled "Strengthening State Level Consumer Protections" [2] and an extensive "Compendium of Recent CFPB Guidance." [3]

In addition, then-Director Rohit Chopra and then-general counsel Seth Frotman published an article in the Harvard Law School Journal on Legislation titled "State Enforcement as a Federal Legislative Tool." [4]

These publications provide state attorneys general and state consumer financial regulators with a detailed road map to pursue consumer financial enforcement — with or without the



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support of the CFPB. Presumably, the CFPB drew up this road map based on the assumption that the second Trump administration would be less aggressive in consumer financial enforcement than the Biden administration.

State Attorneys General and State Financial Regulators

With respect to the federal consumer financial laws, Section 1042 of the Consumer Financial Protection Act, or CFPA, explicitly authorizes the states to enforce the provisions of the CFPA and the regulations issued thereunder.[5] That includes the federal prohibition on unfair, deceptive, or abusive acts or practices in the offering or provision of consumer financial products or services.[6]

In addition, every state has its own consumer financial laws, some of which are arguably more far-reaching than the federal laws. Two states that have historically taken the lead in consumer financial protection are California and New York, both of which show signs of becoming even more active during the second Trump administration.

California Department of Financial Protection and Innovation

The California Department of Financial Protection and Innovation is a fairly recent creation, established through the California Consumer Financial Protection Law, or CCFPL, which was enacted in 2020.

The DFPI characterizes the CCFPL as "one of the most expansive consumer financial protection laws in the nation." [7] The DFPI was "modeled after the CFPB," "designed to promote innovation, clarify regulatory hurdles for emerging products, [] increase education and outreach for vulnerable groups," [8] and "to protect California consumers from ... a regulatory retreat by some federal agencies, most notably the Consumer Financial Protection Bureau," according to the DFPI's website. [9]

Furthering the connection to the CFPB, former CFPB Director Richard Cordray advised on the DFPI and the CCFPL, and CFPB alumnus Manuel Alvarez served as the DFPI's inaugural commissioner.

Despite its recent origin, the DFPI's broad authority, along with California's vast size, have quickly made it among the most significant of state consumer financial regulators.

The DFPI has an active Enforcement Division empowered by the CCFPL to pursue administrative and civil relief on behalf of consumers [10] and has, in its short existence, already brought enforcement actions against credit unions, [11] lenders and financial technology companies.

The DFPI regularly collaborates with other states in enforcement actions as well as the CFPB, most recently in a multistate enforcement action in 2023 involving Prehired LLC for alleged illegal student lending practices relating to online training and income share loans. [12] It has also pursued enforcement involving cryptocurrencies, entering into a consent order in November with crypto lending platform BlockFi and revoking its lending license. [13]

Also in the crypto space, the DFPI has a crypto scam tracker that uses consumer complaints to track scams, and a partnership with the California Department of Justice that works to shut down purported crypto bad actors. [14]

The DFPI is well funded and has vast resources. While it receives some funding from licensing and registration fees, it is also funded through enforcement settlements and penalties.

Like the CFPB, the DFPI is entitled to seek penalties through enforcement, ranging from a low of \$2,500 per violation to a high of \$1 million for each day a violation continues.

Unlike the CFPB, however, the DFPI can use enforcement recoveries and penalties to fund itself. Such a funding structure may incentivize the DFPI to obtain the highest settlements and penalties possible, and focus on entities more able and likely to pay substantial sums.

In addition to enforcement, the DFPI supervises banks and credit unions, securities and investments, lending and borrowing, and nonbank financial services.[15]

The DFPI is currently working to expand its jurisdiction as directed by the CCFPL, which was passed in part to extend California's consumer financial protection oversight to "providers of certain financial products and services previously unregulated by the Department." [16]

To that end, the CCFPL allows the DFPI to identify previously unregulated industries for oversight.[17] The DFPI's first registration regulations went into effect in February, requiring debt settlement services, student debt relief services, private postsecondary education financing, and income-based advances — also known as earned wage access — to register and submit data to the DFPI.[18]

In late 2024, the DFPI also put out a notice of invitation for comment seeking input on identifying additional industries that should be regulated.[19] Given the broad statutory language defining "covered person" and "service provider," the DFPI has wide latitude in determining supervised industries.[20]

As a general rule, whether at the state or federal level, more supervision leads to more enforcement. Therefore, as the DFPI's supervisory authority expands, so will the number of enforcement actions.

State of California Department of Justice

In addition to the DFPI, the California Department of Justice, led by California Attorney General Rob Bonta, is also a leader in state consumer financial enforcement but, unlike the DFPI, possesses both criminal and civil authority.

The California Justice Department pursues consumer financial cases on its own and in partnership with the DFPI, including criminal charges as necessary. It has CFPA Section 1042 authority to enforce the federal consumer financial protection laws and the ability to enforce California's consumer protection laws, which includes the state's UDAAP equivalent.[21]

The California Justice Department has frequently partnered with the CFPB to investigate and sue for potential violations of the consumer financial laws and has been unwaveringly vocal in its support of the CFPB.[22]

It published the top categories of consumer complaints received in 2024, which include topics like banks, debt collection and credit reporting,[23] and issues guidance to financial service providers and consumers within the state.

Such guidance has included warnings to small banks and credit unions that certain overdraft and returned deposited item fees may violate California's Unfair Competition Law,[24] and alerts to consumers that most forms of medical debt can no longer appear on credit reports.[25]

The department also provides practical guidance to consumers on its website for questions on money, credit and debit, similar to the CFPB.[26]

Office of the New York State Attorney General

The Office of the New York State Attorney General is one of the nation's premier law enforcement agencies, staffed with highly skilled trial lawyers and investigators.

Historically, the New York attorney general may be the CFPB's most frequent state enforcement partner.[27] The state's attorney general, Letitia James, has been opposite President Trump on many issues and can be expected to aggressively fill any void left by the CFPB. Like the California Justice Department, the New York attorney general has both civil and criminal authority.

Notably, James is assisted by Christopher D'Angelo, the chief deputy attorney general for economic justice.

D'Angelo is a CFPB alumnus who served as chief of staff to the first CFPB director, Cordray, and oversaw CFPB supervision, enforcement and fair lending from the Obama administration into the beginning of the first Trump administration.

D'Angelo is currently leading the charge to help preserve what the states believe are the proper functions of the CFPB in federal court cases in the U.S. District Court for the District of Maryland (Mayor and City Council of Baltimore v. CFPB) and the U.S. District Court for the District of Columbia (National Treasury Employees Union v. Vought), filing amicus briefs on behalf of numerous states[28] and arguing on behalf of the state of New York in the preliminary injunction hearing in National Treasury Employees Union.[29]

The Economic Justice Division led by D'Angelo has a designated Consumer Frauds and Protection Bureau dedicated to prosecuting "businesses and individuals engaged in fraudulent, misleading, deceptive, or illegal trade practices."[30]

As part of that function, the Consumer Frauds and Protection Bureau releases warnings to consumers, including recent alerts for consumers to protect themselves from "predatory debt collectors."[31]

Uniquely, Section 63(12) of New York Executive Laws gives the New York attorney general authority to enforce any federal law "in the carrying on, conducting or transaction of business" that affects New York.

This provision is often invoked in consumer financial protection lawsuits and effectively enables the state attorney general to enforce all federal consumer protection laws against businesses subject to New York's jurisdiction. Section 63(12) is separate and apart from the authority already conferred upon New York by Section 1042 of the CFPA.

With these authorities, the state attorney general has pursued actions against a wide variety of financial institutions. Notably, however, while New York can and does enforce the CFPA's prohibition against unfair, deceptive, and abusive acts or practices,[32] and has its

own prohibition against deceptive acts or practices, New York is one of the few states that does not currently have a state law prohibition against unfair or abusive acts or practices.[33]

To remedy that gap, the New York attorney general has recently introduced a program bill in the New York state Legislature[34] named the FAIR Business Practices Act.

The FAIR Act would give the New York attorney general authority under state law to police unfair or abusive — as well as deceptive — acts or practices.[35]

James' announcement of the FAIR Act featured endorsements from Sen. Elizabeth Warren, D-Mass., and former Director Chopra.[36]

The FAIR Act is designed to address practices like predatory lending, so-called hidden fees, misleading subscription policies and online scams.[37] Because New York's consumer protection laws have not been significantly updated since 1970, the FAIR Act's proponents hope that it can bring the state's laws in line with legislation elsewhere and address digital fraud and other developing predatory financial tactics.[38]

New York Department of Financial Services

The New York State Department of Financial Services also plays a key role in consumer financial protection. The NYDFS was created in the wake of the 2008 financial crisis through the merger of the New York State Banking Department and the New York State Insurance Department.

Like the CFPB, the NYDFS has enforcement, rulemaking and supervisory powers.[39] It supervises New York banks and a variety of nonbank entities, such as pharmacy benefit managers or reinsurers, that New York requires to be registered, licensed and supervised.[40]

Near the end of the first Trump administration, the NYDFS created a Consumer Protection and Financial Enforcement Division to fill what the then-NYDFS superintendent regarded as the CFPB's "troublesome policy shift away from consumer protection." [41] The division's enforcement mandate is focused on fraud or misconduct with respect to New York's financial services, insurance and banking laws.[42]

Since the nomination of current Superintendent Adrienne Harris in 2021, the NYDFS has aggressively pursued enforcement of New York's consumer protection and financial laws, recovering more than \$630 million in restitution[43] and millions more in penalties.

Demonstrating its focus on consumers, the NYDFS entered into a consent order with CFCU Community Credit Union in 2023 for allegedly charging unlawfully high interest rates to active service members, and pursued an action in 2023 against health insurers including 4 Ever Life Insurance Co. and UnitedHealthcare Insurance Co. of New York on behalf of students allegedly overcharged for student health plans.[44]

The NYDFS also has the authority to issue rules akin to the CFPB governing consumer financial products and services.

To that end, Gov. Kathy Hochul has recently called on the NYDFS to issue regulations to "prohibit predatory fees, cap the number of daily overdraft charges, and improve transparency through timely notifications." [45]

The NYDFS is working to respond to technological changes in the market as well, including by building "one of the largest virtual currency regulatory teams in the world,"[46] according to its website, and releasing guidance for cybersecurity related to AI tools.[47]

Finally, the NYDFS has been actively hiring with the goal of strengthening its consumer financial enforcement.

Recently, it hired Gabriel O'Malley as executive deputy superintendent to lead the Consumer Protection and Financial Enforcement Division.

O'Malley was the long-serving head of the CFPB Enforcement Policy and Strategy team, which was responsible for proposing and providing the legal basis for CFPB enforcement investigations. O'Malley can be expected to bring his 20 years of deep experience in consumer enforcement to New York and to work collaboratively with D'Angelo, his former CFPB colleague who now serves in the New York Attorney General's Office.

Conclusion

When President Trump was first elected in 2016, the states as a whole were not prepared to fully pick up the mantle of consumer financial protection if the CFPB pulled back. Indeed, the California DFPI did not even exist at that time.

Contrary to expectations, however, the CFPB was active during the first Trump administration, especially in enforcement, where it brought more overall actions than the Biden administration and recovered billions in redress and penalties for consumers.

This time, however, the states are prepared. While many states would prefer a robust CFPB,[48] they are ready to go it alone.

Whether working alone or collaboratively with other states, California and New York can be expected to actively pursue their own consumer financial enforcement, supervision and regulation agenda. It would be a mistake not to take these motivated, well-funded state regulators seriously.

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[1] Testimony of Jonathan McKernan, Nominee to be Director of the Bureau of Consumer Financial Protection, Before the Committee on Banking, Housing, and Urban Affairs of the United States Senate. 119th Cong. (Feb. 27,

2025), https://www.banking.senate.gov/imo/media/doc/mckernan_testimony_2-27-25.pdf.

[2] CFPB, Strengthening State-Level Consumer Protections, Promoting Consumer Protection Federalism (Jan. 2025), https://files.consumerfinance.gov/f/documents/cfpb_strengthening-state-level-consumer-protections_2025-01.pdf.

[3] CFPB, Compendium of Recent CFPB Guidance (Jan. 2025), https://files.consumerfinance.gov/f/documents/cfpb_guidance-compendium_2025-01.pdf.

[4] Rohit Chopra & Seth Frotman, State Enforcement As A Federal Legislative Tool, 62 Harv. J. on Legis. (2025), available at <https://journals.law.harvard.edu/jol/2025/01/15/state-enforcement-as-a-federal-legislative-tool/>.

[5] 12 U.S.C. §5552(a)(1). There are independent but related authorizations to state attorneys general and to "State regulator[s]." Section 1042(a)(2) removes states' authority to enforce the CFPA against federally chartered banks. Id. §5552(a)(2). But states remain able to enforce such laws against state-chartered banks.

[6] Section 1036(a)(1)(B) states that it is unlawful for any "covered person" or "service provider" to "engage in any unfair, deceptive, or abusive act or practice." 12 U.S.C. §5536(a).

[7] Press Release, Cal. Dep't of Fin. Protection & Innovation, DFPI Reports Expanded Enforcement, Awareness Under CA Consumer Financial Protection Law (Apr. 25, 2024), https://dfpi.ca.gov/press_release/dfpi-reports-expanded-enforcement-awareness-under-ca-consumer-financial-protection-law/.

[8] DFPI History, Cal. Dep't of Fin. Protection & Innovation, <https://dfpi.ca.gov/about/history/> (last visited Mar. 17, 2025).

[9] Id.

[10] Enforcement Division, Cal. Dep't of Fin. Protection & Innovation, <https://dfpi.ca.gov/about/dfpi-divisions-and-offices/enforcement/> (last visited Mar. 12, 2025).

[11] Press Release, Cal. Dep't of Fin. Protection & Innovation, DFPI Takes Action Against Patelco Credit Union for Cybersecurity Violations (Feb. 4, 2025), https://dfpi.ca.gov/press_release/dfpi-takes-action-against-patelco-credit-union-for-cybersecurity-violations/.

[12] Press Release, CFPB, State Partners and CFPB Sue Prehired for Illegal Student Lending Practices (July 13, 2023), <https://www.consumerfinance.gov/about-us/newsroom/state-partners-and-cfpb-sue-prehired-for-illegal-student-lending-practices/>.

[13] Press Release, California Dep't of Fin. Protection & Innovation, California DFPI Revokes Crypto Lender BlockFi's Finance Lending License (Nov. 7, 2024), https://dfpi.ca.gov/press_release/california-dfpi-revokes-crypto-lender-blockfis-finance-lending-license/.

[14] Press Release, Cal. Dep't of Fin. Protection & Innovation, DFPI Strengthens Partnership with CA Department of Justice to Stop Crypto Scams and Prevent Consumer Financial Loss

(Mar. 10, 2025) https://dfpi.ca.gov/press_release/dfpi-strengthens-partnership-with-ca-department-of-justice-to-stop-crypto-scams-and-prevent-consumer-financial-loss/.

[15] Regulated Industries, Cal. Dep't of Fin. Protection & Innovation, <https://dfpi.ca.gov/regulated-industries/> (last visited Mar. 17, 2025).

[16] California Consumer Financial Protection Law, Cal. Dep't of Fin. Protection & Innovation, <https://dfpi.ca.gov/rules-enforcement/laws-and-regulations/california-consumer-financial-protection-law/> (last visited Mar. 18, 2025).

[17] Id.

[18] Press Release, Cal. Dep't of Fin. Protection & Innovation, DFPI Announces New Rules to Expand Protections for California Consumers (Oct. 22, 2024), https://dfpi.ca.gov/press_release/dfpi-announces-new-rules-to-expand-protections-for-california-consumers/.

[19] Cal. Dep't of Fin. Protection & Innovation, Invitation for Comment on Proposed Rulemaking Under the California Consumer Financial Protection Law (PRO 07-24) (Oct. 28, 2024), <https://dfpi.ca.gov/wp-content/uploads/2024/10/Notice-of-Invitation-for-Comments.pdf>.

[20] Cal. Fin. Code § 90005(f), (n).

[21] Cal. Bus. & Prof. Code §§ 17200, 17204.

[22] See, e.g., Press Release, State of Cal. Dep't of Just. Off. of the Att'y Gen., Attorney General Bonta Continues Support of CFPB: Destruction of CFPB is the Destruction of Backbone of Federal Consumer Protections (Feb. 22, 2025), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-continues-support-cfpb-destruction-cfpb-destruction>.

[23] Press Release, State of Cal. Dep't of Just. Off. of the Att'y Gen., In Recognition of National Consumer Protection Week, Attorney General Bonta Releases California's Top 10 Consumer Complaints (Mar. 3, 2025) <https://oag.ca.gov/news/press-releases/recognition-national-consumer-protection-week-attorney-general-bonta-releases>.

[24] Press Release, State of Cal. Dep't of Just. Off. of the Att'y Gen., Attorney General Bonta Issues Warning to Small Banks and Credit Unions: Surprise Overdraft and Returned Deposited Item Fees Harm Consumers (Feb. 22, 2024) <https://oag.ca.gov/news/press-releases/attorney-general-bonta-issues-warning-small-banks-and-credit-unions-surprise>.

[25] Press Release, State of Cal. Dep't of Just. Off. of the Att'y Gen., Attorney General Bonta Issues Medical Debt Consumer Alert (Jan. 13, 2025), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-issues-medical-debt-consumer-alert>.

[26] Money, Credit, and Debit, State of Cal. Dep't of Just. Off. of the Att'y Gen., <https://oag.ca.gov/consumers/money-credit-debt> (last visited Mar. 17, 2025).

[27] See, e.g., Press Release, Off. of the N.Y. State Att'y Gen., Attorney General James, CFPB, and Multistate Coalition Protect Consumers from Debt-Relief Company that Took Over \$100 Million in Illegal Fees (Jan. 19, 2024), <https://ag.ny.gov/press-release/2024/attorney-general-james-cfpb-and-multistate-coalition-protect-consumers-debt>; Press Release, Off. of the N.Y. State Att'y Gen., Attorney General James and CFPB Sue Auto Lender for Cheating

Thousands of New Yorkers (Jan. 4, 2023), <https://ag.ny.gov/press-release/2023/attorney-general-james-and-cfpb-sue-auto-lender-cheating-thousands-new-yorkers>; Press Release, Off. of the N.Y. State Att'y Gen., Attorney General James and Consumer Financial Protection Bureau Sue Major International Money Transfer Provider for Violating Consumer Protection Laws (Apr. 21, 2022), <https://ag.ny.gov/press-release/2022/attorney-general-james-and-consumer-financial-protection-bureau-sue-major>; Press Release, Off. of the N.Y. State Att'y Gen., Attorney General James Wins \$811 Million Judgment Against Predatory Company That Targeted Immigrant Detainees (Apr. 2, 2024), <https://ag.ny.gov/press-release/2024/attorney-general-james-wins-811-million-judgment-against-predatory-company>.

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[30] About the Office: Economic Justice Division, Off. of the N.Y. State Att'y Gen., <https://ag.ny.gov/about/about-office/economic-justice-division#consumer-frauds> (last visited Mar. 11, 2025).

[31] Press Release, Off. of the N.Y. State Att'y Gen., Attorney General James Releases Tips for New Yorkers to Protect Themselves from Predatory Debt Collectors (Feb. 13, 2025), <https://ag.ny.gov/press-release/2025/attorney-general-james-releases-tips-new-yorkers-protect-themselves-predatory>.

[32] E.g., Press Release, Off. of the N.Y. State Att'y Gen., AG James Sues Student Loan Servicer for Mismanaging Loan Forgiveness Program (Oct. 3, 2019), <https://ag.ny.gov/press-release/2019/ag-james-sues-student-loan-servicer-mismanaging-loan-forgiveness-program>; Consumer Financial Protection Bureau, Northern Resolution Group, LLC, Douglas MacKinnon, Mark Gray, Enhanced Acquisitions, LLC, and Delray Capital, LLC, Enforcement Actions, <https://www.consumerfinance.gov/enforcement/actions/northern-resolution-group-llc-douglas-mackinnon-mark-gray-enhanced-acquisitions-llc-and-delray-capital-llc/> (brought Nov. 2, 2016 with NY AG).

[33] Cf. N.Y. Gen. Bus. Law §349 (prohibiting only "deceptive" acts or practices).

[34] Press Release, Off. of the N.Y. State Att'y Gen., Attorney General James Takes Action to Protect New York Consumers and Small Businesses (Mar. 13, 2025), <https://ag.ny.gov/press-release/2025/attorney-general-james-takes-action-protect-new-york-consumers-and-small>.

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] N.Y. Fin. Serv. Law §302.

[40] Who We Supervise, N.Y. State Dep't of Fin. Servs., https://www.dfs.ny.gov/who_we_supervise (last visited Mar. 12, 2025).

[41] Press Release, N.Y. State Dep't of Fin. Servs., Statement by DFS Superintendent Maria T. Vullo Regarding CFPB's Troublesome Policy Shift Away from Consumer Protection (Jan. 25, 2018), https://www.dfs.ny.gov/reports_and_publications/press_releases/st20180125.

[42] N.Y. Fin. Serv. Law §§309(b), 404. Unlike the New York Attorney General, DFS cannot seek damages but may seek injunctive relief from a court and may seek redress for consumers. DFS may also levy a civil penalty for fraud or violation of state or Federal debt collection or fair lending laws. Such proceedings for civil penalties are administrative proceedings.

[43] About Us, N.Y. State Dep't of Fin. Servs., https://www.dfs.ny.gov/About_Us (last visited Mar. 17, 2025).

[44] Press Release, N.Y. State Dep't of Fin. Servs., Superintendent Adrienne A. Harris Announces \$4.6 Million in Settlements With Student Health Insurers, and \$3.2 Million in Reimbursements to Students (May 11, 2023), https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202305111.

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[47] Press Release, N.Y. State Dep't of Fin. Servs., DFS Superintendent Adrienne A. Harris Issues New Guidance to Address Cybersecurity Risks Arising from Artificial Intelligence (Oct. 16, 2024), https://www.dfs.ny.gov/reports_and_publications/press_releases/pr20241016.

[48] See, e.g., Brief for New York, New Jersey, et al. as Amici Curiae Supporting Plaintiffs, Mayor and City Council of Baltimore v. CFPB, No. 1:25-cv-00458-MJM (D. Md. Feb. 19, 2025); Brief for New York, New Jersey, et al. as Amici Curiae Supporting Plaintiffs, National Treasury Employees Union v. Vought, No. 1:25-cv-00381-ABJ (D.D.C. Feb. 21, 2025).