CSBS Comment Letter: Request for Information to Assist the Taskforce on Federal Consumer Financial Law

# CSBS Comment Letter: Request for Information to Assist the Taskforce on Federal Consumer Financial Law

June 1, 2020
|
Download PDF

**Read the full letter [PDF]**

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552
Docket ID CFPB-2020-0013

Re: *Request for Information to Assist the Taskforce on Federal Consumer Financial Law*

The Conference of State Bank Supervisors (CSBS)[1] writes to express significant concerns regarding the timing and focus of the request for information (RFI) issued by the Consumer Financial Protection Bureau (CFPB or Bureau) to assist the Taskforce on Federal Consumer Financial Law (Taskforce). The RFI has been issued in the midst of the national emergency caused by the Coronavirus Disease 2019 (COVID-19) pandemic. The onset of the COVID-19 pandemic has led to economic turmoil and a multitude of challenges for many consumers. As the sole federal agency singularly focused on protecting consumers in the marketplace for financial services, the Bureau should be leveraging its partnerships with state regulators and taking immediate steps to protect American consumers facing economic hardship.

Our concerns regarding the timing of the request for information's issuance are only further aggravated by the content of the request for information itself. Given the importance of state consumer financial protection laws generally, but especially in times of crisis, state regulators are concerned with the inclusion of inquiries soliciting input on whether additional preemption of state laws and state regulatory authority is warranted. Questions as to whether less federal preemption is warranted are noticeably absent from the request for information, which is equally troubling, particularly as it relates to the apparent focus of the Taskforce. This naturally raises concerns regarding whether the current composition of the Taskforce will enable it to objectively assess and make informed recommendations regarding federal and state coordination and the role of state consumer protections law.

State banking agencies license and regulate more than 20,000 nonbank financial services providers, including

mortgage lenders and servicers, consumer finance companies, money service businesses, and debt collectors. Through their licensing and supervisory authority, state regulators are responsible for ensuring nonbank financial service providers operate in a safe and sound manner and effectively serve the local markets. Within their jurisdiction, state regulators play a critical role in intaking, reviewing, and following-up on consumer complaints. They also act as the first regulatory point of contact for new consumer issues and serve as a source of information to share deceptive practices with the public. These responsibilities expose state regulators to a wide array of consumer financial products, which provide them with an informed perspective on the needs of the market.

State regulators exercise concurrent regulatory, supervisory, and enforcement authority with the CFPB. In order to foster a coordinated system of supervision and information sharing, state regulators and the CFPB established the State Coordinating Committee (SCC) in 2013. The SCC is a multi-state regulatory oversight group charged with maintaining consistent standards for examinations while promoting efficient communication between the CFPB and the states. The SCC has continuously helped improve the oversight of nonbank entities by eliminating regulatory redundancies and enhancing the supervisory capacity of both state and federal regulators.

The request for information contains multiple questions regarding the preemption of state authority in the consumer finance sphere on the basis of overlapping enforcement powers. The questions imply that the shared jurisdiction between state and federal regulators is leading to an increased burden for individual companies and small financial institutions. However, by vesting states with concurrent enforcement authority, Congress recognized that state regulators are needed as a force multiplier for consumer protection when federal counterparts lack the initiative to move forward.[2] This authority empowers state regulators to enforce the statutory provisions of federal consumer financial laws within their respective states, independent of the Bureau's decision to act or not.[3] While Congress gave state regulators independent authority, it also made them a co-enforcer with the CFPB to pursue violations of federal law by entities under shared supervisory jurisdiction. In recent years, coordinated efforts between the states and the CFPB proved that this valuable partnership fostered a more efficient and effective regulatory system.[4]

Congress' rationale for expanding the authority of state regulators in the consumer finance market is well-founded and provides consumers with greater protection. State regulators are able to act on local knowledge and unique perspectives that federal regulators may lack. The state system also allows consumers to reach their legislator or regulator directly, granting states better access to the needs of the community. This in turn leads to swifter responses from state governments and an increased ability to facilitate change. Federal and state regulators share the objective of protecting consumers from the harmful practices of consumer financial services providers. This objective can be better achieved if states are not prevented from acting as a regulatory partner by federal preemption.

The federalist system of the United States emphasizes the preservation of state police powers, which ensures the health, safety, and general public welfare of state citizens. This principle has often been expanded to apply to economic growth and consumer protection. As a result, the federalist financial system relies upon state regulators to focus on the specific requests that affect their states so the federal regulators can concentrate on the issues affecting the nation as a whole. When it comes to consumer protection, state regulators can recognize consumer harm and market irregularities at the local level and provide a quick solution to the problem. Often times, federal regulators have difficulty recognizing these issues until they become a national dispute. Preserving state authority to ensure consumer protection from predatory or unsafe practices has remained a crucial part of the federalist financial system.

Due to the history of coordination and the essential role state regulators play in the consumer finance space, CSBS is concerned by the failure to include any perspectives from state regulatory agencies on their Taskforce.

States are a critical partner for the Bureau in enforcing federal consumer protection laws. They also handle a significant portion of consumer complaints regarding the functionality of the consumer finance market. However, former state regulators are not represented on the Taskforce. The lack of representation on the Taskforce, coupled with the inclusion of outcome-oriented questions focused on expanding preemption of state authority raises serious questions regarding the objectivity and mission of the Taskforce.

State regulators believe that, only through robust coordination and collaboration, can we achieve our shared supervisory mission of protecting consumers in the most efficient and effective manner possible. This spirit of coordination and collaboration does not seem to be reflected in the timing or content of the request for information, and we fear, the future work of the Taskforce. Indeed, the issuance of this request for information in the midst of a global pandemic has likely deprived the public of the opportunity to fully comprehend and respond thereto. For these reasons, we urge the CFPB to ensure that the Taskforce remains objective and informed going forward.

Sincerely,

John Ryan

---

## Footnotes

[1] CSBS is the nationwide organization of state banking and financial regulators from all 50 states, American Samoa, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. CSBS supports the state banking agencies by serving as a forum for policy and supervisory process development, by facilitating regulatory coordination on a state-by-state and state-to-federal basis, and by facilitating state implementation of policy through training, educational programs, and exam resource development.
[2] *See* Amy Widman and Prentiss Cox, "State Attorneys General's Use of Concurrent Public Enforcement Authority in Federal Consumer Protection Laws," 33 Cardozo L. Rev. 53 (2011) ("The study results strongly suggest that fears about over-enforcement or inconsistent enforcement by the states have not been realized in actual practice.")
[3] Section 1042 of the Dodd-Frank Act provides that "A state regulator may bring a civil action or other appropriate proceeding to enforce the provisions of this title or regulations issued under this title with respect to any entity that is state-chartered, incorporated, licensed, or otherwise authorized to do business under state law (except as provided in paragraph (2)), and to secure remedies under provisions of this title or remedies otherwise provided under other provisions of law with respect to such an entity."
[4] *See* 2016 joint state-federal settlement with DOJ, HUD, CFPB, and 49 state AGs and DC against HSBC in relation to mortgage origination, servicing, and foreclosure abuses.

## Related Posts