



Positioned to Protect: How State and Local Authorities Can Fill the CFPB Void



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**A U.S. PIRG Education Fund Report
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Introduction and Summary

The Consumer Financial Protection Bureau (CFPB) is a federal government agency established as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 in the wake of the 2008 financial collapse. The CFPB was designed to be a consumer watchdog, looking out for consumers all across the financial marketplace -- whether they do business at banks or non-banks.

Under the first CFPB director, Richard Cordray, the CFPB did just that. However, since Cordray left the position in 2017, acting director Mick Mulvaney has slowed enforcement, lowered penalties to wrongdoers and restructured the agency in several ways, apparently to minimize its impact.¹ He has delayed implementation of a Payday Lending Rule approved by Cordray, joined payday lender efforts to overturn it in court and announced an effort to rewrite it.² He has indicated he will no longer fully enforce the Military Lending Act.³ His proposed replacement, Kathy Kraninger, is a close Mulvaney ally who lacks a track record of protecting consumers in the financial marketplace.⁴ Her nomination to a full five-year term was approved by the Senate Banking Committee in August and she was confirmed by the full Senate on Thursday, December 6, 2018.⁵

Shortly after Mr. Mulvaney's appointment as acting director of the CFPB, a group of state attorneys general expressed concerns about the new leadership and promised to enforce federal and state consumer protection laws. In a letter to President Trump about the appointment of Mulvaney, the attorneys general wrote, "If incoming CFPB leadership prevents the agency's professional staff from aggressively pursuing consumer abuse and financial misconduct, we will redouble our efforts at the state level to root out such misconduct and hold those responsible to account."⁶ Attorneys general from sixteen states and D.C. signed onto the letter.⁷

¹ Evan Weinberger, "[Enforcement Slowdown Defines Mulvaney's CFPB Tenure](#)," *Bloomberg Government*, 23 November 2018.

² Kate Berry, "[Judge suspends compliance deadline for CFPB payday rule](#)," *American Banker*, 7 November 2018.

³ Kate Berry, "[Pentagon, others baffled by CFPB plan to cease military lending exams](#)," *American Banker*, 11 October 2018.

⁴ Jim Puzzanghera, "[Critics say CFPB nominee Kathy Kraninger lacks the experience to be the nation's top consumer financial watchdog](#)," *Los Angeles Times*, 18 June 2018.

⁵ Steve Goldstein, "[Kraninger approved by Senate committee to lead CFPB](#)," *MarketWatch*, 23 August 2018. The Senate voted 255 (50-49) 6 December 2018 to confirm Kathy Kraninger. https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=115&session=2&vote=00255

⁶ Kate Berry, "[Mulvaney unfit to lead CFPB: Schneiderman, 16 state AGs](#)," *American Banker*, 12 December 2017.

⁷ [Letter to President Donald J. Trump](#), 12 December 2017.

States include: California, Connecticut, District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Mexico, North Carolina, Oregon, Vermont, Virginia, Washington.

In addition to bringing actions under state laws, states have the authority to enforce federal financial consumer protection laws. Section 1042 of the Dodd-Frank Wall Street Reform and Consumer Protection Act gives state attorneys general authority to bring action to enforce Title X of Dodd-Frank, the Consumer Financial Protection Act (CFPA) which established the CFPB.⁸ Additionally, Mulvaney himself has indicated he would like to collaborate with state attorneys general as they decide which cases to bring.⁹ However, we have seen no evidence that this has occurred.

Given the fact that federal enforcement has weakened, state enforcement of consumer protection laws is as critical as ever. This report looks at a number of state and local actions that protect consumers, especially as federal agencies slow their activity.

Some ways that states have acted to increase consumer protection activity include the following:

- Some states have established what have been referred to as their own “Mini-CFPBs” within their Attorney General’s Office (AGO). In addition to these states, other state AG offices have been active with multi-state actions as well as single state actions, primarily through enforcement of their own state Unfair and Deceptive Acts and Practices (UDAP) laws.
- States have also improved student loan borrower protections in the absence of an aggressive CFPB or U.S. Department of Education. These states have protected student loan borrowers through establishing student loan servicing licensing requirements, creating offices of student loan ombudsman, and implementing a student loan borrower bill of rights.
- Local actions: In addition to state attorneys general, some county, city and local governments have implemented new education and enforcement programs to help protect consumers financially. While some local consumer agencies have existed for decades, new projects are being developed, some with support of a nonprofit with substantial philanthropic backing called the CFE Fund, as well as through other individual city and local efforts.

This report highlights some examples of successful consumer protection efforts from the states and recommends how other states can follow their lead and build upon their successes. States and other regulators should use ideas and case studies from this report to emulate successful state and local actions and better protect consumers.

In any case, please note that this report is only a first step in evaluating state and local responses to the pause and even reversal of course by the CFPB and other federal agencies, including the Department of Education. It is a snapshot of state and local actions to better protect consumers, not a comprehensive analysis. We hope, however, that it will serve as a source of ideas for steps that

⁸ Robert Jaworski, “[New Jersey AG Attempts to Fill Perceived Void Left By CFPB Retrenchment.](#)” *Financial Regulatory Report*, 6 April 2018.

⁹ Barbara Mishkin, “[CFPB to look to state AGs for more leadership in enforcement arena.](#)” *Ballard Spahr LLP Consumer Finance Monitor*, 1 March 2018.

state and local policymakers can take to help police financial markets better and also give consumers some tools that they can use to protect themselves.

Newer Initiatives

“Mini-CFPBs” and Other New State Efforts

Almost all state attorneys general enforce consumer protection within their office and devote some amount of resources to combating unfair and deceptive practices by businesses. Many states have been consistent in their enforcement of the law and protection of consumers.

Two states that we are aware of, Pennsylvania and New Jersey, have formally announced new AGO efforts referred to as a “mini-CFPB” and a “state-level CFPB”, respectively.¹⁰ Other state actions to devote more resources to consumer protection include Maryland’s establishment of its Financial Consumer Protection Commission to advise legislative policymakers and Virginia’s creation of a special predatory lending enforcement unit. Other states may have also increased resources to their AG offices to take up the slack caused by the downturn at the CFPB.¹¹ While it is critical in the current climate that each of these states has increased its resources for consumer protection, in the long run, the better situation would be to also have a strong CFPB using all of its tools and greater resources alongside them.

Pennsylvania

In Pennsylvania, Attorney General Josh Shapiro has maintained a focus on consumer protection. After being elected in 2016, AG Shapiro quickly turned his attention to financial issues by establishing the Consumer Financial Protection Unit in 2017.¹² Led by former CFPB attorney Nick Smyth, this unit is meant to strengthen the ability of the state AG’s Bureau of Consumer Protection to do its job.

Focus of the Consumer Financial Protection Unit

According to the Pennsylvania Attorney General Office (AGO), the Consumer Financial Protection Unit within the state AG’s Bureau of Consumer Protection operates as a scaled down version of the

¹⁰ Kate Berry, “[Can state AGs really serve as ‘mini-CFPBs’?](#)”, *American Banker*, 20 August 2018.

State of New Jersey Office of the Governor, [Attorney General Grewal Announces New Leadership at the Division of Consumer Affairs](#) (press release), 27 March 2018.

New Jersey has called its efforts a “state-level CFPB” and press coverage has referred to Pennsylvania’s unit as a “mini-CFPB.”

¹¹ A nationwide survey of state AGO resources would be a worthwhile topic for further research.

¹² Pennsylvania Office of the Attorney General, [Attorney General Josh Shapiro Announces Consumer Financial Protection Unit](#) (press release), 20 July 2017.

federal CFPB, with focuses on mortgage issues, debt collection, payday lending, auto financing, and bank issues.¹³ In addition to these issue areas that mirror the federal CFPB, Pennsylvania does work on more “run of the mill scams” including gift card scams that target seniors. Pennsylvania’s AGO also has broad state consumer protection statutes and can go after wrongdoing they see that may be more tangential to consumer financial protection issues.

Budget

Part of Pennsylvania's success is due to the increased resources the state has given the Attorney General’s Office (AGO). There was a 10% budget increase for the AGO in recent years, and while much of that money will go to criminal and opioid investigations, the increase has also benefited the Bureau of Consumer Protection, where the mini-CFPB known as the Consumer Financial Protection Unit is housed.¹⁴ This increase has allowed the AG office to better enforce consumer protection law against more corporate wrongdoers.

Enforcement

Central to Pennsylvania’s success in consumer financial protection is the increased funding and staff resources that have allowed its enforcement actions to thrive. Within the roughly 80-person bureau of consumer protection, 25 staff are attorneys and roughly 15 of these focus primarily on consumer financial issues. This large allocation of attorney time spent on consumer financial protection allows the state to be more aggressive than in previous years in lawsuits, both in state and federal court.¹⁵

In federal court, one case that AG Shapiro has taken up is an enforcement action against student loan servicer Navient. After the CFPB received over 1,000 complaints from Pennsylvania residents about the servicer, Pennsylvania decided to sue the company for \$1,000 for each violation of consumer protection law.¹⁶ The lawsuit centers around Navient’s “deceptive practices,” providing loans to many students with a high probability of defaulting. California, Illinois, Mississippi, and Washington have also brought action against Navient. State action against Navient is critical because after former CFPB director Richard Cordray left office, the CFPB’s case against the firm has stalled.¹⁷

Another relevant case that the AGO brought was a 2014 case against both predatory lender Think Finance LLC and its private equity backer Victory Park Capital Advisors.¹⁸ Both companies, according to AG Shapiro, profited from illegitimately operating as a Native American tribe, which

¹³ Senior Official, Pennsylvania Office of the Attorney General, personal communication, 16 November 2018.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Dave Rathmanner, “[Pennsylvania AG Shapiro Files Yet Another Lawsuit with Navient](#),” *LendEDU*, 28 September 2018.

¹⁷ Stacy Cowley, “[How a Potential \\$1 Billion Student Loan Settlement Collapsed After Trump Won](#),” *The New York Times*, 7 October 2018.

Teddy Nykiel, “[Navient Lawsuit: What Student Loan Borrowers Need to Know](#),” *Nerdwallet*, 20 November 2018.

¹⁸ Peg Brickley, “[Think Finance bankruptcy exposes messy business](#),” *MarketWatch*, 24 October 2017.

purportedly exempted it from Pennsylvania's interest rate limits.¹⁹ Opponents of such schemes refer to the practice as "rent-a-tribe" payday lending.²⁰ In February 2018, Pennsylvania scored a victory as a federal judge ruled that the case could move forward.²¹

Pennsylvania's AGO has also developed an emphasis on mortgage borrower protection. In October, the office informed consumers that they could file complaints about mortgage redlining in the Philadelphia area. This comes in response to recent reports that "African American borrowers were 2.7 times more likely to be denied a home mortgage in Philadelphia than white borrowers."²²

In total, the AGO filed 115 legal actions (lawsuits) in 2017, collecting penalties of \$13,504,331. By adding up these penalties, in addition to costs retrieved and miscellaneous revenue collected, the office collected \$29,457,138 on consumer protection related cases.²³

Consumer Complaint Database

In addition to direct enforcement actions against companies, the AGO also has about 30 people within the Bureau of Consumer Protection who work on consumer complaint mediation between consumers and companies. These agents process the roughly 22,000 complaints the state receives a year and work to have the company respond within 15 days of the complaint.

In 2017, the Bureau of Consumer Protection opened 21,942 complaints, resulting in \$2,808,979 saved for consumers through these complaints. Below is a list of the top ten most common complaints from Pennsylvania in 2017:²⁴

- 1) Do not call (6,219)
- 2) Telecoms & broadcast (4,546)
- 3) Motor vehicles (4,172)
- 4) Home improvement (3,995)
- 5) Consumer credit & money handling (2,177)
- 6) Debt collection (1,432)
- 7) Home & consumer products (1,339)
- 8) Real estate & construction (1,308)
- 9) Rental properties (1,026)
- 10) Miscellaneous (854)²⁵

¹⁹ Pennsylvania Office of Attorney General, [*Attorney General Shapiro Announces a Win in Case against Investment Firm involving "Rent-a-Tribe" Payday Lending Scheme*](#) (press release), 5 February 2018

²⁰ Leslie Bailey, Blog entry on new Public Justice report, 2 Jan 2018 <https://www.publicjustice.net/tribal-immunity-may-no-longer-get-jail-free-card-payday-lenders/>.

²¹ Pennsylvania Office of Attorney General, [*Attorney General Shapiro Announces a Win in Case against Investment Firm involving "Rent-a-Tribe" Payday Lending Scheme*](#) (press release), 5 February 2018.

²² Pennsylvania Office of Attorney General, [*Attorney General Shapiro Puts Spotlight on Redlining*](#) (press release), 22 October 2018.

²³ Senior Official, Pennsylvania Office of the Attorney General, personal communication, 16 November 2018.

²⁴ Senior Official, Pennsylvania Office of the Attorney General, personal communication, 16 November 2018.

²⁵ Note that cases were not opened on all complaints received.

New Jersey

New Jersey's consumer protection efforts are based in the Division of Consumer Affairs of the Attorney General's Office. In April of 2018, Governor Phil Murphy promised to fill the void left by the Trump Administration's pullback of the Consumer Financial Protection Bureau by creating a "state-level CFPB." For this purpose, New Jersey Attorney General Gurbir Grewal announced that the governor would nominate Paul Rodriguez to serve as the new Acting Director of the existing NJ Division of Consumer Affairs. Director Rodriguez started his position in June.²⁶

Focus of the Division of Consumer Affairs

The Division of Consumer Affairs (DCA) is responsible for a variety of issues, including licensing and assisting consumers with complaints. The division has over 500 employees total. Within the Division of Consumer Affairs is the Office of Consumer Protection which looks primarily at Consumer Fraud. According to Acting Director Paul Rodriguez and Deputy Director Kaitlin Caruso, they have teams working on commercial fraud, cyber fraud, and financial fraud. Among some of the issues that their team has focused on are student loan issues, payday lending, and issues that target vulnerable populations including the elderly, military members, and non-native English speakers.²⁷

Consumer advocate Beverly Brown Ruggia of New Jersey Citizen Action said the new leadership at the Department of Consumer Affairs has a lot to update and improve on from previous administrations, but she applauded AG Grewal for pushing back on the Department of Education and CFPB and promoting enforcement of consumer protection laws. She said that in the future she expects DCA to focus on education, data and complaint collection, and improving lines of communication with consumers. She also noted that DCA has been better in recent months at collaborating with consumer groups like hers.²⁸

Budget

The "state-level CFPB" efforts have just gotten started. There has been no noticeable change in the amount of resources given to the Division of Consumer Affairs compared to previous years.²⁹

Enforcement

The acting director estimated that there are 10-20 attorneys working on consumer fraud issues, although no attorneys have spent 100% of their time on consumer finance; they work on all sorts of consumer issues.

In recent months, the Division of Consumer Affairs has brought forward a number of cases to protect consumers against consumer fraud. In October, the Division announced a settlement with

²⁶ State of New Jersey Office of the Governor, [Attorney General Grewal Announces New Leadership at the Division of Consumer Affairs](#) (press release), 27 March 2018.

²⁷ Paul Rodriguez and Kaitlyn Caruso, New Jersey Division of Consumer Affairs, personal communication, 5 November 2018.

²⁸ Beverly Brown Ruggia, New Jersey Citizen Action, personal communication, 13 November 2018.

²⁹ Paul Rodriguez and Kaitlyn Caruso, New Jersey Division of Consumer Affairs, personal communication, 5 November 2018.

Ameriprise Financial Services, under which the firm paid a total of \$375,000.³⁰ According to a NJ Division of Consumer Affairs press release, Ameriprise sold risky alternative investment products such as real estate investment trusts (REITs) to small investors and did not keep required records of investment sales. According to Director Rodriguez it “disregarded the duty of care they owed to their customers.” As part of the settlement, Ameriprise will pay civil penalties of \$150,000, costs of \$150,000, and \$75,000 for the Division of Consumer Affairs investor education program.

In another case, the AG and Bureau of Securities within the Division of Consumer Affairs took action against an online gambling company for defrauding 26 New Jersey investors out of \$1.3 million.³¹ The man in charge of the company allegedly used money from investors to bankroll his own personal finances. The Division of Consumer Affairs will be working to resolve this case and provide restitution to defrauded investors.

In June, the Division announced a \$1.36 million settlement with IDT Energy for unfair and deceptive business practices during the winter of 2014.³² When a cold winter caused energy prices to increase, IDT allegedly engaged in deceptive marketing and misled consumers. Included in the settlement is \$1.23 million in restitution to consumers. In addition to monetary penalties, the state also required the company to change its business practices to prevent future unfair and deceptive practices.³³

Virginia

While New Jersey and Pennsylvania have established new AGO units referred to as “mini-CFPBs,” Virginia has also improved its Consumer Protection Section by making structural changes, including adding a “Predatory Lending Unit” in 2016 as part of a specific focus on predatory lending.³⁴ Predatory lending is a major issue on both a state and national level. Oftentimes, lenders will encourage borrowers to take out high interest loans that they know consumers will be unlikely to repay without taking out even more loans.

According to the unit’s mission statement, “The PLU investigates and prosecutes suspected violations of state and federal consumer lending statutes, including laws concerning payday loans,

³⁰ New Jersey Division of Consumer Affairs, [*Ameriprise Financial Services Agrees to Pay New Jersey Bureau of Securities \\$375,000 to Resolve Violations Relating to Sales of Alternative Investments*](#) (press release), 5 October 2018.

³¹ New Jersey Division of Consumer Affairs, [*New Jersey Bureau of Securities Takes Action Against Middlesex Man and His Companies for Allegedly Defrauding More than \\$1.3 Million from NJ Investors in his Online Gambling Companies*](#) (press release), 28 August 2018.

³² New Jersey Division of Consumer Affairs, [*Third-Party Energy Supplier IDT Energy, Inc. Enters into \\$1.36 Million Settlement with the State to Resolve Allegations It Preyed on Consumers During the Harsh Winter of 2014*](#) (press release), 6 June 2018.

³³ Ibid.

³⁴ Virginia Office of the Attorney General, [*OAG Completes Reorganization and Expansion of Consumer Protection Operation*](#) (press release), 21 November 2016.

title loans, consumer finance loans, mortgage loans, mortgage servicing, and foreclosure rescue services.”³⁵

One example of the Virginia crackdown on predatory lending is a settlement with internet lender MoneyLion. The state AGO successfully returned \$2.7 million in relief to 3,800 consumers.³⁶ In addition to MoneyLion, the unit has recovered millions for consumers from other online lenders, including CashCall, MoneyKey, Mr. Amazing Loans, Net Credit, and Opportunity Financial.³⁷

As of February 7, 2018, the predatory lending unit within the Consumer Protection Section has recovered \$25 million in restitution and debt forgiveness from online lenders.³⁸

Maryland

In 2017, Maryland policymakers approved a Financial Consumer Protection Commission to make recommendations on consumer protection related laws and policies. The mission of the commission is to watch out for consumer and financial protections and “make recommendations for action to the Governor, the General Assembly, and the Maryland Congressional Delegation as necessary to safeguard Maryland consumers.”³⁹

The commission’s first report was issued in January, 2018. The report recommended that Maryland policymakers “take steps to further protect consumers and investors.”⁴⁰ Some specific recommendations for the Maryland Congressional delegation included opposing efforts to roll back the Dodd-Frank Wall Street Reform and Consumer Protection Act and supporting an independent CFPB.

However, the bulk of the commission’s work has been to issue reports and make recommendations for state reforms.

The commission’s 2018 report recommended additional funding for the Consumer Protection Division within the Office of the Attorney General as well as increasing its scope and ability to impose larger legal penalties. The commission also advocated for state action on a number of topics including credit reporting regulations and development of a student loan bill of rights.⁴¹

Following the recommendation of the Financial Consumer Protection Commission, policymakers enacted the Maryland Financial Consumer Protection Act (HB 1634) in 2018. This law takes into

³⁵ Virginia Office of the Attorney General Consumer Protection Section, *Predatory Lending Unit*, accessed at https://www.oag.state.va.us/consumer-protection/index.php?option=com_content&view=article&id=38.

³⁶ Virginia Office of the Attorney General, [*Virginia Consumers To Receive \\$2.7 Million In Relief From Settlement With Internet Lender*](#) (press release), 7 February 2018.

³⁷ Virginia Office of the Attorney General, [*Attorney General Herring Alleges Illegal Predatory Loans in Suit Against One of Virginia’s Largest Online Lenders*](#) (press release), 4 May 2018.

³⁸ Virginia Office of the Attorney General, [*Virginia Consumers To Receive \\$2.7 Million In Relief From Settlement With Internet Lender*](#) (press release), 7 February 2018.

³⁹ Maryland Financial Consumer Protection Commission, [*2017 Interim Report*](#), January 2018.

⁴⁰ Ibid.

⁴¹ Maryland Financial Consumer Protection Commission, [*2017 Interim Report*](#), January 2018.

account some of the commission's suggestions such as increasing civil penalty amounts and establishing a student loan ombudsman.⁴²

The commission is headed by Gary Gensler, who chaired the Commodity Futures Trading Commission in the Obama administration.⁴³

In October 2018, the commission held another hearing to discuss the following potential policies for the 2019 legislative session:

- Establishing fiduciary duty (best interest) standards for investment advisors. In 2018, the U.S. Court of Appeals for the Fifth Circuit vacated a strong Obama-era U.S. Department of Labor rule establishing a “best interest” standard, which would have required retirement financial advisors to serve the best interest of their customers.⁴⁴ The U.S. Securities and Exchange Commission has since proposed a weaker “Regulation Best Interest” that would impose modest duties on all brokers and investment advisers, not only retirement advisers.⁴⁵
- Discussion of the CFPB arbitration rule, which would have banned companies from using mandatory arbitration clauses but was repealed by the new Congress and administration.⁴⁶ Although the U.S. Supreme Court has severely restricted the authority of states to regulate arbitration clauses, the commission also heard a proposal from Lauren Saunders of the NCLC concerning its “Model Consumer and Employee Justice Enforcement Act.”⁴⁷
- Possible further regulation of student loan servicers and recommendations for further state laws beyond the 2018 law which established a Student Loan Ombudsman.⁴⁸

While the Maryland Financial Consumer Protection Commission is not an agency with enforcement power, its recommendations offer ideas to protect consumers from financial abuse. Establishing a state financial reform commission may be an entry-level mechanism for other states to study possible reforms.

Recommendations

- Two states that we are aware of, Pennsylvania and New Jersey, have formally announced enhanced AGO efforts referred to as a “mini-CFPB” and a “state-level CFPB”, respectively. This has caught the attention of the public and industry and is an effective way to encourage policymakers to provide additional resources to consumer financial protection. In

⁴² [Financial Consumer Protection Act of 2018](#), HB 1634, 2018.

⁴³ Kate Berry, “[Can state AGs really serve as ‘mini-CFPBs’?](#)”, *American Banker*, 20 August 2018.

⁴⁴ Tara Siegel Bernard, “[Court Overturns Obama-Era Rule on Retirement Planners](#),” *The New York Times*, 16 March 2018.

⁴⁵ Darla Mercado, “[Here's what you need to know about this new 'investor protection' rule](#),” *CNBC*, 8 August 2018.

Securities and Exchange Commission, [Proposed Rule: Regulation Best Interest](#), 7 August 2018.

⁴⁶ Ian McKendry, “[Senate votes to repeal CFPB arbitration rule in win for financial institutions](#),” *American Banker*, 24 October 2017.

⁴⁷ David Seligman, National Consumer Law Center, [The Model State Consumer & Employee Justice Enforcement Act](#), November 2015.

⁴⁸ Handout from October Maryland Financial Consumer Protection Commission hearing.

Pennsylvania, the state increased the AGOs' budget, allowing for a larger number of attorneys, analysts and advocates to work on consumer financial issues.

- Some states allow AGOs to buttress their scarce resources by retaining civil penalties collected from enforcement. In some states, penalties go to the general fund. These states should consider allowing their AGOs to retain the use of civil penalties as well.
- But any state can take action to increase resources allocated to consumer financial protection whether or not those efforts are referred to as "mini-CFPB." Adding to enforcement with more consumer protection staff, including attorneys, and greater funding resources, is an essential step.

State Actions on Student Loan Borrower Protection

Student Loan Market Background

Over 44 million Americans currently owe \$1.4 trillion dollars in student debt. The student loan market includes student loan lenders as well as student loan servicers. Student loans can either be private student loans or federal direct loans. Federal direct loans are much more common, comprising just over \$1 trillion out of the \$1.4 trillion in student loan debt.⁴⁹ While federal direct loans are backed by the U.S. Department of Education, private student loans are often backed by banks, credit unions, and other lenders. The servicers are a middleman between the lenders and borrowers, and they process payments, answer questions, and work with borrowers on repayment plans and loan consolidation.⁵⁰

The student loan servicer industry needs oversight due to issues with some of the largest servicers. The largest servicer, Navient, has been accused of misapplied payments, surprise fees, processing delays, and steering of borrowers into more costly repayment options.⁵¹ Complaints against student loan servicers are common. In 2017, over 10,000 consumers complained about Navient via the CFPB complaint database, with other student loan servicers also attracting a large number of complaints.⁵² (*See Appendix A*).

State Response

In response to many of these issues with student loan servicers, states have taken steps to protect student loan consumers, including for-profit college students, from unfair lending practices and

⁴⁹ Student Loan Hero, *A Look at the Shocking Student Loan Debt Statistics for 2018*, accessed at <https://studentloanhero.com/student-loan-debt-statistics/>.

⁵⁰ The College Investor, *How to Deal With Navient Student Loan Servicing Problems and Lawsuits*, accessed at <https://thecollegeinvestor.com/19172/navient-student-loan-servicing-problems/>, 16 September 2018.

⁵¹ Ibid.

⁵² Investopedia, *The Worst Student Loan Servicers Going Into 2018*, accessed at <https://www.investopedia.com/personal-finance/worst-student-loan-servicers-going-2018/>, 6 October 2018.

unnecessary student debt through enactment and implementation of new student loan borrower rights. The rights are enforced through state licensing authority and the Dodd-Frank Act which gives states rights to protect citizens against financial fraud and abuse.⁵³ While many states have introduced legislation and are in the process of passing bills to help protect student borrowers, California, Connecticut, Illinois, Washington, and Washington D.C, have all already passed and signed protective measures including registration and licensing of student loan servicers.⁵⁴

Connecticut was the first state to pass and enact a student loan borrower protection law in 2015.⁵⁵ The author of the law, Representative Matthew Lesser, said he and officials from the Department of Banking crafted it by borrowing from aspects of other consumer protection statutes and from the CFPB Ombudsman model.⁵⁶ According to Lesser, student loan borrower protection bills should include both industry-facing regulations and consumer-facing ombudsman.⁵⁷ In Connecticut, a student loan ombudsman has not yet been hired, meaning public facing outreach on student loan issues could still be improved.⁵⁸ Other states have reached out to Connecticut and Representative Lesser's office for guidance. For new states in the process of crafting legislation, it could be beneficial to reach out to states like Connecticut that have successfully implemented laws.

The main provisions of many of these proposals and laws include student loan servicer licensing, establishment of a student loan ombudsman, and a student loan bill of rights (*See Appendix B*). Some states, including Maryland and Virginia have passed laws that create student loan ombudsmen without licensing requirements.

Ombudsman Position

One aspect of necessary student loan borrower protections is the establishment of a state-level student loan ombudsman. In states that have created this position, some responsibilities for the ombudsman include:

⁵³ Maggie Thompson, Charlotte Hancock, Christian Smith, "[Borrower's Bill Of Rights: States Step Up To Protect Student Loan Borrowers](#)," *Generation Progress*, 10 August 2017.

⁵⁴ On 21 Nov 18, a U.S. District Court judge issued a decision holding that part of the DC rules, as they apply to certain federal, but not to private, student loans, was preempted. We expect the city to appeal. We have also spoken to several experts that believe this problem can be easily cured with minor changes to the law. See Civil Action No. 2018-0640, Student Loan Servicing Alliance v. Taylor et al, Opinion of US District Judge Paul Friedman, 21 November 2018, available at https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2018cv0640-39.

⁵⁵ Connecticut State Department of Banking, *Highlights*, accessed at https://www.ct.gov/dob/lib/dob/consumer_credit_nonhtml/student_loan_standards_7-1-17.pdf.

⁵⁶ Representative Lesser was elected to the Connecticut State Senate in 2018.

⁵⁷ Matthew Lesser, Connecticut State Representative, personal communication, 13 November 2018.

⁵⁸ *Ibid*.

- Reviewing and attempting to resolve any complaints from student loan borrowers
- Analyzing data on student loan borrower complaints
- Educating student loan borrowers and helping them understand their rights and responsibilities regarding loans
- Making recommendations for state and local laws and regulations
- Reviewing student loan history for student borrowers
- Establishing a borrower education course
- Providing information to legislators and the public while making recommendations

Licensing

An important aspect of student loan borrower protection is requiring the licensing of all student loan servicers. In all states that have implemented licensing, servicers cannot function in the state without a license. Requirements for getting a license in these states include:

- Completing an application for licensing
- Paying an application fee
- Signing application under penalty of perjury
- Submitting a criminal background check

The licensing is done through a variety of state departments, including the Department of Banking (CT), Department of Business Oversight (CA), Department of Financial Institutions (WA), Department of Financial and Professional Regulation (IL), and the Department of Insurance, Securities, and Banking (DC).

Borrower Bill of Rights

Connecticut, Illinois, and D.C. have implemented their own student loan borrower bill of rights in order to provide protections for borrowers and keep servicers accountable. Connecticut, the first state in the country to pass a borrower bill of rights has the following rights:⁵⁹

- 1) Default Aversion Services - Servicers must help borrowers avoid defaulting on loans
- 2) Notice of Transfer - Borrowers must be notified when a loan is transferred to a new servicer
- 3) Application of Payments - Payments must be applied to an outstanding balance on the date of payment and in a beneficial way to borrower
- 4) Books and Records - Servicers must keep records of payment amounts
- 5) Periodic Billing Statements - Servicers must send a balance of payments at least quarterly
- 6) Payoff Statements - Borrowers have a right to a complete and accurate payoff statement
- 7) Responding to Borrower Inquiries - Servicers must respond to borrower inquiries in a timely and accurate measure

⁵⁹ Connecticut State Department of Banking, *Highlights*, accessed at https://www.ct.gov/dob/lib/dob/consumer_credit_nonhtml/student_loan_standards_7-1-17.pdf.

- 8) Fees - Servicers must inform borrowers of when and why fees occur
- 9) Credit Reporting - Servicers must provide accurate information to credit bureaus and must investigate inaccurate credit reporting about borrowers
- 10) Compliance with Applicable Federal Laws - Servicers must comply with existing federal law

Other states have written slightly different borrower bill of rights protections (*See Appendix B*).

While several states have implemented these regulations and paved the way for student borrower protections, the federal government has signaled a hands-off policy when it comes to dealing with the student loan debt crisis. Betsy DeVos and the Education Department have warned states like Washington that they believe state legislation around this issue is preempted by weaker federal laws.⁶⁰ Additionally, the Department of Education no longer shares information with the CFPB, which would help the bureau's enforcement efforts.⁶¹ This makes clear that uncertainty exists within the Department of Education about its ability or desire to protect student consumers.

But the CFPB may not be the answer either. CFPB Student Loan Ombudsman Seth Frotman quit the bureau in August, and the acting director has implemented reductions in the Student office's powers and staff. In May, Mulvaney combined the Office for Students and Young Consumers with the CFPB's Office of Financial Education, facilitating a transition from a focus on investigation to information sharing.⁶² In a letter, Frotman accused Acting Director Mick Mulvaney of undercutting enforcement, undermining the bureau's independence, and shielding bad actors from scrutiny.⁶³ Speaking about Mr. Mulvaney, Mr. Frotman wrote that, "you have used the Bureau to serve the wishes of the most powerful financial companies in America."⁶⁴ In a recent New Jersey speech, Frotman noted that the Justice Department, Department of Education, and CFPB are all not likely to act on student loan protection, and it is up to states like New Jersey to "stand up for itself."⁶⁵ Since leaving the CFPB, Mr. Frotman has established the Student Borrower Protection Center, a nonprofit organization fighting to protect the interests of student loan borrowers.⁶⁶

In addition to the states listed in the section above, bills regarding student loan servicing regulations are being drafted in state houses around the country. Still, according to Frotman, only 15% of Americans live in states that oversee practices of student loan servicers. As states craft their own legislation, they can use these states' approaches to licensing, ombudsman positions, and a

⁶⁰ Katherine Long, "[Washington's new law regulating student-loan servicers could face legal challenge from feds](#)," *The Seattle Times*, 21 March 2018.

⁶¹ Andrew Kreighbaum, "[Education Dept. Ends Partnership With CFPB](#)," *Inside Higher Ed*, 5 September 2017.

⁶² Cory Turner, "[Senators Demand Answers From CFPB Head After Student Loan Watchdog's Resignation](#)," *National Public Radio*, 14 September 2018.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Seth Frotman, "[We Take Care of Our Own](#)," *Medium*, 16 October 2018.

⁶⁶ Student Borrower Protection Center, accessed at <https://protectborrowers.org/>.

student loan bill of rights as a model for how to protect student borrowers. Higher Ed Not Debt provides a map tracking state legislature progress on student loan borrower protection bills.⁶⁷

Recommendations

As the CFPB and Department of Education turn their backs on student borrowers, states can use these above states as a model for establishing student loan ombudsman positions and institute new student loan servicer regulations.

1. In particular, early adopters like Connecticut and Washington have proposed both ombudsman positions and licensing requirements that new states can use as a template.
2. Many states may have new AGs beginning in January 2019, and they should be encouraged to devote resources for student loan protection.
3. A key to state legislatures and attorneys general devoting resources to student loan protection is advocacy by consumer and student advocacy groups continuing to emphasize this crisis.
4. While establishing ombudsman positions is a good step, licensing and oversight power give the ombudsman resources to make a better impact on consumers. Establishing an ombudsman solely for borrower advice and education may not be enough. As more states consider student loan borrower protections, and states with existing new laws review them, they should focus on the full protection of creating the ombudsman position, instituting new licensing requirements on lenders and adding a student loan borrower bill of rights.

Cities and Other Local Government Consumer Financial Protection

In this section, we will take a look at a number of ways cities and local governments can get involved and protect consumers, much like state governments do. In particular, the Cities for Financial Empowerment (CFE) Fund has introduced initiatives for both education and enforcement for consumer financial protection. Additionally, larger cities such as New York City and Los Angeles have long had strong consumer protection and enforcement offices. Many county governments have long had consumer offices; to illustrate, we will take a look at Montgomery County, Maryland's long history of its own effective Office of Consumer Protection.

Consumer Education

One component of consumer financial protection is providing consumers with enough educational outreach to teach them to consolidate their debts and increase their savings. The CFE Fund has established several city Financial Empowerment Centers that provide free counseling to many low

⁶⁷ Higher Ed Not Debt, *Putting Student Debt Reform on the Map*, accessed at <https://higherednotdebt.org/blog/putting-student-debt-reform-map-2>, 10 May 2018.

and middle-income residents. Additionally, New York City has instituted very similar programs that can help consumers through educational outreach.

Financial Empowerment Centers

Financial Empowerment Centers (FEC) provide free counseling on a one-on-one basis to low and middle-income residents. FECs are currently operating in 21 cities throughout the U.S, and CFE plans on expanding to roughly 10 more cities this year. (See *Appendix C*.) According to CFE principal Kant Desai, the centers are designed to be a “problem-solving service” for debt and financial issues, while creating a more transparent marketplace for lower income families.⁶⁸ Counselors for the program spend individual time with each client. They are hired for an ability to work with low-income populations as well as knowledge of financial services.

According to a CFE report, “An Evaluation of Financial Empowerment Centers,” the following total results were achieved over a 30-month period from March 2013 to September 2015 in Denver, Lansing, Nashville, Philadelphia, and San Antonio.⁶⁹ (See *Table 1*.)

Table 1 Denver, Lansing, Nashville, Philadelphia, and San Antonio

Clients	Debt Reduced	Debt reduced per client	Increased family savings	Savings per client	% increasing credit score by 35 points or more
5,305	\$22,545,564	\$4,250	\$2,731,922	\$515	60.3%

These efforts have helped many beneficiaries who have needed it most - the average monthly income of these clients was only \$1,754, or \$21,048 annually. Other successes of the program include 52% of participants increasing their savings by at least 2% of their income. This can allow clients to both apply for loans more easily as well as begin to invest their money in more profitable ways.

New York City

Much of the CFE Fund’s success with Financial Empowerment Centers has been modeled after New York City’s effective Department of Consumer Affairs. New York City has also established effective educational programs, both for businesses and consumers, according to the 2018 Mayor Management Report. (See *Table 2*.)⁷⁰

⁶⁸ Kant Desai, CFE Principal, Cities for Financial Empowerment Fund, personal communication, 11 October 2018.

⁶⁹ Cities for Financial Empowerment Fund, [An Evaluation of Financial Empowerment Centers](#).

⁷⁰ New York City Department of Consumer Affairs, [Mayor’s Management Report](#).

Table 2 New York City-Assistance

Clients	Debt Reduced	Debt reduced per client	Increased family savings	Savings per client	% achieving measurable success
10,171	\$63,473,000	\$6,240	\$5,321,956	\$523	60.3%

In addition to educating consumers, New York City has taken the step of educating businesses on their legal responsibilities to consumers as well as how to comply with the New York Department of Consumer Affairs' laws. They have educated over 18,000 businesses through direct outreach, which can stop consumer financial problems before they happen and eliminate the need for enforcement actions or complaint resolution.

Enforcement

While much of the enforcement for consumer financial protection happens through state attorneys general offices, many city and local governments have the authority to enforce financial protections and return money to consumers through enforcement actions. Consumer complaint databases are one effective marketplace surveillance mechanism used by local governments as well as state attorneys general and federal agencies, including the CFPB, FTC, and prudential bank regulators.

Los Angeles

Enforcement of consumer financial protection has been a priority for the Los Angeles City Attorney's Office. LA City Attorney Mike Feuer sued and reached a settlement with Wells Fargo in 2016 over the company's practice of opening unauthorized accounts on behalf of customers. In addition to the City of Los Angeles, Wells Fargo also settled with federal regulators. The CFPB imposed a penalty of \$100 million, and the Office of the Comptroller of the Currency, the chief prudential regulator for national banks, imposed a penalty of \$35 million.⁷¹ The Los Angeles settlement order with Wells Fargo required restitution for consumers and \$50 million in penalties for Wells Fargo.⁷² The penalty funds will be used for future consumer protection efforts.⁷³ In addition to the financial penalties, Wells Fargo announced it will be issuing a \$2.6 million refund to consumers for fees associated with the fraud.⁷⁴

⁷¹ Los Angeles City Attorney, [Los Angeles City Attorney Mike Feuer Achieves Historic Result in Consumer Action Against Wells Fargo; Bank to Make Restitution to Customers, Pay \\$50-million in Penalties; Unprecedented Coordination with Federal Regulators to Benefit Consumers Nationwide](#) (press release), 8 September 2016.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Hayley Fox, ["Wells Fargo Slapped with \\$50 Million Fines in L.A. Settlement."](#) *L.A. Business Journal*, 8 September 2016.

The LA City Attorney sued Wells Fargo under California’s Unfair Competition Law (UCL). Section 17204 authorizes the attorney general, district attorneys, county counsels, and city attorneys to file lawsuits on behalf of injured citizens.⁷⁵ Most large settlements with companies like Wells Fargo take place on a national or state scale, but the City of Los Angeles’ success should encourage other city attorneys to pursue large restitution-based actions.

New York City

In addition to efforts to educate consumers, New York City has been active in enforcement of consumer financial protection. New York City, which has a high level of authority for enforcement actions, is active in complaint mediation and enforcement (*See Table 3*).⁷⁶

Table 3 New York City-Complaints

Complaints received	Complaints resolved	% of complaints resolved	Restitution through consumer complaints	Complaints resolved to satisfaction of business and consumer	Total settlements through enforcement
2,804	2,701	96%	\$3,485,000	64%	\$5,725,000

Montgomery County, Maryland

In addition to city governments around the country beginning to advance their consumer financial protection efforts, numerous county governments around the nation have done the same. For example, in Maryland, both Montgomery and Howard Counties have each established successful Offices of Consumer Protection (OCP). The Montgomery County Office of Consumer Protection’s mission statement is to “administer and enforce consumer protection laws prohibiting unfair and deceptive business practices in order to ensure integrity in our marketplace for consumers and businesses.” The County’s Office of Consumer Protection was established in 1971.⁷⁷

Montgomery County has established its own consumer database. According to the department’s reporting, 95% of those who ask for restitution via the complaint database receive it. Additionally, 54% of OCP initiated enforcement cases are closed by the Office of Consumer Protection.⁷⁸

CFE Fund Consumer Financial Protection Initiative

⁷⁵ [The People of the State of California v. Wells Fargo & Company](#), Superior Court of the State of California County of Los Angeles, Central Civil West, Case No. BC580778, 2016.

⁷⁶ New York City Department of Consumer Affairs, [Mayor’s Management Report](#).

⁷⁷ Montgomery County, *Office of Consumer Protection*, accessed at <https://www.montgomerycountymd.gov/ocp/>.

⁷⁸ Montgomery County Office of Consumer Protection, [OCP at a Glance](#), 2018.

Another program established through the CFE Fund is the Consumer Financial Protection Initiative, which has been introduced in Denver, Nashville, and Salt Lake City. The Consumer Financial Protection Initiative will be centered around complaint and dispute resolution, legislation and policy development, and enforcement actions. According to the CFE Fund website, some areas where the initiative will focus enforcement include debt collectors, payday lenders, and automobile finance companies.

Each of the three cities where the initiative is being implemented is currently in the planning and implementation stage, with no measurable statistics for enforcement or resolution so far. Before enforcement action for consumer financial protection is introduced on a city-level scale, the cities need authority on a legal basis. While state AGOs derive their authority for consumer financial protection directly through section 1042 of the Dodd Frank Act, most cities derive their authority for consumer protection enforcement through the states, under laws generally known as home rule authority. The extent to which states allow home rule for local governments depends largely on the state.⁷⁹

Much of the work being done in the early stages in Denver, Nashville, and Salt Lake City revolves around working with state and city governments to implement guidelines for enforcement actions. In the meantime, the CFE Fund has gathered guidance from the CFPB on how to establish a consumer complaint database and is working with local authorities to do so. In fact, the Salt Lake City complaint database will launch soon.⁸⁰ For cities in states with strict laws prohibiting enforcement actions, establishing consumer complaint databases to help mediate concerns between consumers and businesses is a viable option to improve business practices and strengthen consumer protection.

Authority for City Level Enforcement of Consumer Financial Protection

As described above, most city governments get authority to enforce consumer protections through state governments. This process, known as home rule authority, differs for each state.

Budget:

Each city or county that commits to consumer financial protection must also take on the cost of enforcement actions and other administrative tasks.

For example, the city of New York had a \$17.2 million budget for licensing and enforcement of consumer protection for fiscal year 2018, with a city population of 8.6 million people.⁸¹ The county of Montgomery, Maryland, which has a population of just over 1 million, has a smaller budget. The

⁷⁹ Kant Desai, CFE Principal, Cities for Financial Empowerment Fund, personal communication, 11 October 2018.

⁸⁰ Ibid.

⁸¹ New York City Department of Consumer Affairs, [Mayor's Management Report](#).

county has a complaint investigation budget of \$801,790 and a law enforcement budget of \$407,750.⁸²

One way to reduce costs of establishing more city level consumer protections is to apply to work with the CFE Fund. The CFE Fund initially covers planning, coordination, and project management for establishing the infrastructure of a city-level CFPB. While the CFE Fund provides help through its funding from Bloomberg Philanthropies, W.K Kellogg Foundation, and other donors, much of the enforcement budgeting must come from cities' own resources. As of March 2018, the CFE Fund had invested \$125,000 in the initiative in Denver, while the Colorado attorney general also contributed \$10,000 for the early stages of the initiative. According to the CFE Fund, the first three cities where the initiative is being introduced have put forth funding already and are fully committed to introducing enforcement of consumer financial protection.

Recommendation:

While state attorneys general may be active in consumer financial protection, local authorities may be best poised to meet the needs of the community. This provides a great opportunity to protect consumers locally and ensure protections, regardless of the CFPB's action on a federal level.

- In city and county governments around the country, elected officials should check to see how much independent authority their state government gives for consumer protection action.
- In addition to adding enforcement actions through extra attorneys and legal resources, cities and counties can also establish education-based counseling to help improve consumer understanding of financial issues.
- Cities can also establish consumer complaint databases and facilitate mediation between businesses and consumers.
- A step that cities can take without adding actual enforcement is to withhold their business from financial institutions who partake in predatory behavior. By redirecting investments from bad financial actors, cities can show they are committed to protecting consumers.

With a combination of legal enforcement, complaint mediation, and consumer education, cities and counties can help take the lead in helping consumers financially.

⁸² Montgomery County Office of Consumer Protection, [OCP at a Glance](#), 2018.

Traditional Initiatives

Individual State Efforts

Where Enforcement Is Housed In Each State

While New Jersey and Pennsylvania have gained extra attention for establishing a “state-level CFPB” and “mini-CFPB” through their state AGOs, a vast majority of states across the nation also handle most of their consumer protection enforcement through the AG office.

Overall, all 50 states and the District of Columbia have some sort of consumer protection efforts and enforcement through an AGO. All state attorneys general, whether they are involved heavily in consumer protection or not, take part in individual and multi-state actions and litigation.

In total as of 2017, there are also 17 non-Attorney General state offices and departments that handle consumer protection.⁸³

Protection from Payday Lenders

Sixteen states and D.C. have banned payday loans by setting limits of 36% APR or less.⁸⁴ Colorado is the newest state to join this list of states after the 2018 midterm election with the passage of Proposition 111, which caps APRs at 36% and stops payday lending. Two states - Maine and Oregon - allow lower-cost payday loans with more regulation. Thirty-two states still allow high cost payday lending; they have failed to adopted legislation banning these loans or closing loopholes that allow payday lenders to operate.

Each state regulates payday loans in different departments. For example, some of the largest states in the nation house high-cost loan regulation in the following places: California Department of Corporations, Florida Office of Financial Regulation, Illinois Division of Financial Institutions, New York State Banking Department, and Texas Office of Consumer Credit Commissioner. However, Colorado, for example, houses its credit regulation inside the AGO.⁸⁵

A full list of payday lending regulators by state can be found on the Consumer Federation of America’s payday loan map.⁸⁶

⁸³ U.S. General Services Administration, [Consumer Action Handbook](#), April 2017
Pages 106-118.

⁸⁴ Consumer Federation of America, *Legal Status of Payday Loans by State*, accessed at
<https://paydayloaninfo.org/state-information>.

⁸⁵ Ibid.

⁸⁶ Ibid.

Consumer Complaint Databases

All state AGOs and other agencies that house consumer protection efforts allow residents to file consumer complaints against companies. They also have consumer complaint databases made up of complaints submitted to them. As with the federal CFPB's complaint form, state complaint forms typically prompt consumers to input personal information, information about the company, transaction information, and a complaint description or narrative.

While the CFPB complaint database is public, very few state level versions of complaint databases are available for public review. While states such as Oregon and Virginia allow the public to search companies in the complaint database, no state database we have analyzed provides written explanations of the complaints like the CFPB's database does.⁸⁷ We found that Illinois, Vermont, and Wisconsin are states that release an annual list of top 10 complaint topics. For other states, consumer complaints are available upon request through Open Records or Freedom of Information laws.

Since 2015, the top five complaints submitted to the CFPB are as follows:⁸⁸

Debt Collection	302,438 complaints
Credit Reporting	273,699 complaints
Mortgage	155,519 complaints
Credit Card	90,242 complaints
Checkings/Savings	88,170 complaints

This contrasts with the top 10 complaints from state and local complaint databases around the country. The Consumer Federation of America's report of complaints from 2017 analyzed 38 state, city, and county complaint databases. While the CFPB complaint database only handles consumer financial topics, state and local databases also handle a number of other topics.

⁸⁷Oregon Department of Justice, *Be Informed: Search Consumer Complaints*, accessed at <https://justice.oregon.gov/complaints/>.

Virginia.gov, *Search our Complaint Database*, accessed at <https://www.oag.state.va.us/consumer-protection/complaint/search/>.

In the case of the CFPB, written explanations of complaints are referred to as "narratives."

⁸⁸ Bureau of Consumer Financial Protection, *Complaint snapshot: 50 state report*, October 2018.

The list below shows the top 10 state and local complaints in 2017.⁸⁹

“1. Auto: Misrepresentations in advertising or sales of new and used cars, lemons, faulty repairs, auto leasing, and towing disputes.

2. Home Improvement/Construction: Shoddy work, failure to start or complete the job.

3. Retail Sales: False advertising and other deceptive practices, defective merchandise, problems with rebates, coupons, gift cards and gift certificates, failure to deliver.

4. Credit/Debt: Billing and fee disputes, mortgage modifications and mortgage-related fraud, credit repair, debt relief services, predatory lending, illegal or abusive debt collection tactics.

5. Landlord/Tenant: Unhealthy or unsafe conditions, failure to make repairs or provide promised amenities, deposit and rent disputes, illegal eviction tactics.

6. Services: Misrepresentations, shoddy work, failure to have required licenses, failure to perform.

7. Communications: Misleading offers, installation issues, service problems, billing disputes with phone and internet services.

8. Health Products/Services: Misleading claims, unlicensed practitioners, failure to deliver, medical billing issues.

9. Household Goods: Misrepresentations, failure to deliver, faulty repairs in connection with furniture or appliances.

10. (Tie) Home Solicitations: Misrepresentations, abusive sales practices, and failure to deliver in door-to-door, telemarketing or mail solicitations, do-not-call violations; **Internet Sales:** Misrepresentations or other deceptive practices, failure to deliver online purchases; **Travel:** Misrepresentations, failure to deliver, cancelation and billing disputes.”

Recommendations on Databases

- All states should follow the lead of the CFPB and states like Illinois, Wisconsin, and Vermont in issuing a report summarizing their annual top ten complaint categories. This annual list will publicize which issues affect consumers the most, as well as promote state work in resolving these complaints.
- Another big step that states can make to improve consumer protection efforts and results would be to make consumer complaint databases public. Just as the CFPB makes complaints

⁸⁹Consumer Federation of America, “[2017 Consumer Complaint Survey Report](#),” 30 July 2018.

public to ensure businesses respond to public pressure, states have the ability to do the same, instead of maintaining a non-public database and then only making complaints public upon request.

- States should use data from consumer complaint databases to help guide enforcement and regulatory efforts to protect consumers as trends about bad corporate actors or changes in significant categories of complaints emerge.
- A step that states can take without adding actual enforcement is to withhold their business and investments from financial institutions who partake in predatory behavior.

Measuring State Consumer Laws and Their Enforcement

With the CFPB not as aggressively pursuing cases regarding consumer financial protection, strong actions by state AGOs are vital in ensuring that consumers will be protected and companies will be held accountable.

Central to many state AG actions are state UDAP (Unfair and Deceptive Acts and Practices) laws that are meant to hold many financial institutions accountable. In this section, we will look at which states have strong existing UDAP laws as well as which states are most active in enforcing their UDAP laws.

We reviewed two widely cited reports on the effectiveness of state consumer protection laws. A recent report by the National Consumer Law Center compares state consumer protection laws, known generally as either “little-FTC Acts” or Unfair and Deceptive Acts and Practices (UDAP) Laws. It ranks states based on how effective their statutory framework is and provides policymakers with a road map to improve them.

A recent law review article by three law professors takes a critical look at how well different states are implementing their consumer protection laws: How many enforcement actions do they take? How much money do they recover in civil penalties and restitution? Do some states punch above, or below, their weight?

These two reports, reviewed together, provide important empirical evidence to shape future actions by policy makers to protect consumers better.

Strength of UDAP Laws

As analyzed in a 2018 National Consumer Law Center (NCLC) report, some states have stronger UDAP laws than others, allowing for better single-state attorney general consumer protection efforts.⁹⁰

⁹⁰ National Consumer Law Center, [*Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws*](#), March 2018.

In the report, NCLC notes that states including Hawaii and Massachusetts have strong UDAP statutes that allow for enforcement by the state (likely the attorney general) as well as private enforcement by consumers, without as many exemptions for certain businesses or industries. Other states that NCLC noted as having consumer-friendly UDAP laws include Connecticut, Illinois, and Vermont.

When evaluating state UDAP strengths and weaknesses, the NCLC grades states either “strong”, “mixed,” or “weak” on the following criteria:

- Practices Prohibited - broad deception prohibition, broad unfairness prohibition, rulemaking authority.
- Scope - covers credit, covers insurance, covers utilities, covers post-sale acts, covers real estate.
- State Enforcement - civil penalty amount, does not require proof of intent or knowledge.
- Remedies for Consumers - no gaps in scope of consumer ability to enforce, multiple or punitive damages, attorney fees for consumers, class actions, allows consumer suit without proof or reliance, allows consumer suit without proof of public impact, allows consumer suit without pre-suit notice, allows consumer suit for any type of injury.

By using our own analysis, we assigned a point value to each NCLC category: “strong”=5, “mixed”=3, “weak”=1. (*See Table 4.*) Additionally, if a category was undecided or not found, we excluded it from consideration. Using these criteria, the states on the left rated as having the 10 strongest UDAP protections across the board, while the chart on the right shows the 10 weakest state UDAP laws.

Table 4- U.S. PIRG Analysis: Strength of UDAP Laws

Strongest			Weakest		
State	Cumulative Score (Strong=5, Mixed=3, Weak=1)	Percent	State	Cumulative Score (Strong=5, Mixed=3, Weak=1)	Percent
Hawaii	90/90	100%	Indiana	59/85	69%
Illinois	88/90	98%	Nebraska	59/85	69%
Vermont	83/85	98%	Minnesota	61/90	68%
Massachusetts	84/90	93%	Florida	54/80	68%
North Dakota	84/90	93%	Colorado	60/90	67%
Washington, D.C.	79/85	93%	Oklahoma	59/75	63%
Connecticut	82/90	91%	Tennessee	47/75	63%
New Mexico	82/90	91%	Virginia	53/85	62%
Missouri	77/85	91%	Mississippi	41/75	55%
New Jersey	77/85	91%	Alabama	48/80	53%

UDAP laws are enacted through the state legislature and are subject to change. Since 2009, according to NCLC, six states including Alaska, Arizona, Delaware, Iowa, North Dakota, and Oregon have improved their UDAP statutes. For example, Iowa changed its statute to make it easier for consumers to enforce their UDAP rights, while Delaware has given its attorney general the authority to adapt the law to emerging forms of deception.⁹¹

Throughout the same time period that many of the above states saw improvement in their laws, states like Ohio and Tennessee weakened UDAP protections. In Tennessee the law no longer applies to many insurance business transactions, leaving an industry that is largely unchecked. In Ohio, a requirement was added in 2012 that made it harder for consumers to collect damages if they chose not to settle the case.⁹²

This analysis by NCLC shows that while some states currently have stronger UDAP protections than others, it is possible to amend the laws and improve consumer protections where they are weaker.

⁹¹ National Consumer Law Center, [Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws](#), March 2018.

⁹² National Consumer Law Center, [Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws](#), March 2018.

Industry-funded think tanks, such as the American Legislative Exchange Council, have introduced proposals for weakening UDAP laws, many of which would potentially make it harder for consumers to protect themselves. For example, the ALEC “Model Act On Private Enforcement of Consumer Protection Statutes” would, among other suggestions:

- Restrict prevailing consumer plaintiff damages to only out of pocket losses, eliminating mental and punitive damages.
- Require plaintiffs to give ten-day notice before filing suit, which may discourage some consumers from suing.
- Restrict awarding the cost of attorney’s fees to consumer plaintiffs to only when the violation was “willful” and “with the purpose of deceiving the public.”
- Limit the statute of limitations to one year from the date of discovery.⁹³

While some of these measures are already in place in some states, state legislatures should reject calls to weaken UDAP statutes.

UDAP Enforcement

Even as some state UDAP laws give both the attorney general and consumers more or less rights by law, some AG Offices are more aggressive in their enforcement than others. A law review article titled “Strategies of Public UDAP Enforcement” by three law school professors, Prentiss Cox, Mark Totten, and Amy Widman analyzes state attorneys general or equivalent enforcement officer actions on all UDAP matters resolved in 2014.⁹⁴

According to their article, the total relief for UDAP related matters nationwide in 2014 was \$232.7 million, with different states approaching enforcement differently. For example, the report defined four states as “Low Volume+”, meaning they took small numbers of cases that resulted in high amounts of relief. At the same time, nine states were defined as “Heavies,” meaning they took on large numbers of cases that resulted in high amounts of relief. The breakdown of different categories of UDAP enforcement by state can be found in Table 14 of that study. (*See Table 5 of this report.*)

⁹³ Dee Pridgen, “[Wrecking Ball Disguised as Law Reform: ALEC’s Model Act of Private Enforcement of Consumer Protection Statutes](#),” *New York University Review of Law & Social Change*, 19 April 2014.

⁹⁴ Prentiss Cox, Amy Widman, Mark Totten, “[Strategies of Public UDAP Enforcement](#),” *Harvard Journal on Legislation*, Vol. 55, 2018, 29 March 2017.

Table 5-Excerpt from Study

	Number of State Enforcers	Total Relief	Mean Total Relief/Case	Median Total Relief/Case
Strategy 1: Non-enforcer	9	110,363	18,394	12,951
Strategy 2: Low-Volume	9	2,200,000	86,489	25,000
Strategy 3: Low-Volume +	4	37,700,000	2,000,000	60,000
Strategy 4: Outsourcers	5	53,200,000	2,800,000	2,200,000
Strategy 5: Street Cops	6	1,200,000	10,742	5,150
Strategy 6: Street Cops +	5	17,100,000	133,788	12,013
Strategy 7: Heavies	9	113,800,000	685,790	50,000
Outliers	4	7.3 Million	564,671	60,000
All States	51	232.7 Million	476,828	19,356

In our own internal analysis of unreleased data from that study, provided to us by the authors of the report, we looked at relief and actions separately. In our analysis, we can see which states provided the highest amount of relief to consumers from UDAP cases, as well as which states took the most UDAP actions in 2014 (*See Table 6.*)

Table 6-Additional U.S. PIRG Analysis of Study⁹⁵

Year: 2014			Year: 2014		
State	Total Relief \$	Party of AG	State	Total Actions Taken	Party of AG
Texas	39,363,519	R	Missouri	47	D
California	28,550,000	D	Florida	42	R
Massachusetts	25,236,740	D	New York	34	D
Mississippi	23,045,092	D	Pennsylvania	34	D
Colorado	22,653,344	R	Indiana	29	R
Nevada	17,584,258	D	Ohio	29	R
Iowa	7,726,424	D	Georgia	28	R
Oregon	6,608,516	D	Illinois	26	D
Florida	6,255,782	R	Massachusetts	26	D
Montana	5,900,000	R	Oregon	24	D

⁹⁵ These are 2014 numbers, meaning some states have elected new attorneys general since this data was analyzed. No data are available for our review for other years.

Recommendations on UDAP Laws:

- Increase the size of possible penalties.⁹⁶
- Make sure agencies, AGOs, and consumers have authority to enforce the law, and reduce widespread exemptions for some lenders or industries.⁹⁷
- Ensure that consumers have a strong private right of action to enforce state consumer laws. Agencies cannot effectively police markets by themselves. The right to bring private actions is an essential aspect of allowing consumers to protect themselves.

In addition to improving state UDAP statutes, it is important to hold attorneys general accountable in enforcing their state's laws.

- One way to hold attorneys general accountable is to mandate yearly releases of aggregate total relief data, broken down by number of cases, mean amount of relief per case, and amount returned to consumers per year. This can be done through public pressure or by policymaker action. If attorneys general know that their performance is public, they may be more inclined to be aggressive in taking action against wrongdoers. Of course, these data could then be normalized by looking at state populations and comparison of funding of the offices.

Other High-Profile Individual State Actions

In addition to looking at national data, we can learn lessons from a variety of state attorneys general that are using their own enforcement powers in single-state actions to hold wrongdoers accountable and protect their consumers. Some examples include five states that have individual lawsuits pending against student loan servicer Navient as well as states' efforts to hold Equifax accountable.

Student Loan Protection Lawsuits

Towards the end of the Obama administration, the CFPB was preparing a settlement with student loan servicer Navient, which many anticipated could include fines and debt relief as high as \$1 billion. However, under the new administration, such a penalty seems unlikely. Navient has met with CFPB officials and hired former state attorneys general as advisers, in an effort to reduce its chances of facing meaningful punishment.⁹⁸

While the federal case against Navient falters, five state attorneys general have filed lawsuits against the student loan servicer. Illinois, Pennsylvania, and Washington filed suit against Navient in 2017, while California and Mississippi pursued enforcements action against the company in 2018.

⁹⁶ As also discussed in the NCLC report recommendations.

⁹⁷ Ibid.

⁹⁸ Stacy Cowley, "[How a Potential \\$1 Billion Student Loan Settlement Collapsed After Trump Won](#)," *The New York Times*, 7 October 2018.

California's lawsuit accuses the company of failing to disclose information, misrepresenting information, and steering borrowers towards more expensive repayment plans.⁹⁹ Judges in Pennsylvania and Washington both rejected Navient's motions to dismiss, allowing the cases to proceed.¹⁰⁰

These states that are in the process of bringing actions against Navient can help protect consumers, specifically student borrowers, through individual state actions in an environment where the CFPB may not.

Massachusetts and other states holding Equifax accountable

Shortly after the 2017 Equifax data breach, Massachusetts Attorney General Maura Healey filed the nation's first enforcement action against Equifax. According to the action, Equifax exposed personal and private consumer information, while also failing to provide timely notice to either the AG Office or consumers as required by law.

This lawsuit aims to hold Equifax accountable by seeking civil penalties and restitution to consumers affected by the massive breach.¹⁰¹ In April of 2018, a Massachusetts judge ruled that AG Healey could move forward with the case.¹⁰² West Virginia Attorney General Patrick Morrisey followed Massachusetts' lead and brought action against Equifax in April of 2018.¹⁰³

Multi-State Actions

With the CFPB and other federal regulators less aggressively pursuing enforcement, state attorneys general teaming up to pursue fines, settlements, and restitution from a number of corporate wrongdoers is as important as ever. The attorneys general have been successful in multi-state, often bi-partisan, enforcement actions and lawsuits against companies as well as hostile federal agencies. Additionally, state attorneys general have teamed up in letters and activities to urge policymakers and the Administration to better protect consumers. Multi-state actions such as letters and enforcement are an effective way for attorneys general to maximize their limited resources.

⁹⁹ California Office of the Attorney General, [Attorney General Becerra Charges Navient Corporation, Largest Student Loan Servicer, with Deceitful Practices and Debt-Collection Misconduct in Lawsuit](#) (press release), 28 June 2018.

¹⁰⁰ Stacy Cowley, ["California Will Be Fourth State to Sue Navient Over Student Loans,"](#) *The New York Times*, 28 June 2018.

¹⁰¹ Office of Attorney General Maura Healey, *AG Healey Sues Equifax* (press release), 19 September 2017.

¹⁰² Alison Frankel, ["State AG's Equifax case may portend big problems for data breach defendants,"](#) *Reuters*, 5 April 2018.

¹⁰³ Nate Raymond, ["West Virginia Sues Equifax Over Data Breach,"](#) *Reuters*, 13 April 2018.

Enforcement Actions

A central part of a state attorney general's job is enforcement, and in many cases the AG Offices have teamed up to bring actions against a variety of companies. Bipartisan cooperation between attorneys general has resulted in a number of large settlements throughout the past year in different areas of consumer protection such as banking, mortgage lending, credit reporting, and student loan borrowing. The following examples include a sample of some recent high-profile multi-state efforts.

Enforcement against PHH Mortgage

One example of a multi-state case resulting in relief for consumers is a multi-state lawsuit against PHH Mortgage Corporation. In early January of 2018, 48 states and D.C. reached a \$45 million settlement with PHH.¹⁰⁴ This state action comes as the CFPB dismissed its case against PHH after the U.S. Court of Appeals for the D.C. Circuit vacated the \$100+ million fine for alleged Real Estate Settlement Procedures Act (RESPA) violations.¹⁰⁵

The multi-state settlement comes after PHH Mortgage Corporation was accused of improperly servicing loans for a 4-year period from early 2009 to late 2012. Allegations claim PHH charged unauthorized fees to borrowers, did not process loan modification requests, and threatened foreclosure on residents in programs to keep their houses. In addition to the \$45 million settlement, the agreement requires that PHH will follow mortgage servicing standards, conduct audits, and provide audit results to the states.

Out of the \$45 million settlement, \$30.4 million will be made in restitution payments to borrowers who were affected by PHH Mortgage Corporation's malpractice. Each borrower who may have been subject to foreclosure during the 2009-2012 period will qualify for a minimum payment of \$840.¹⁰⁶

In this case, the multi-state action will deter bad behavior by other mortgage servicers, who will take action to improve their practices in the future. Additionally, the monetary relief can help consumers directly, as many states have administrators who will contact and inform eligible recipients of settlement money.

Data security and free credit freezes

In September of 2017, Equifax - one of the 3 main credit reporting agencies - was subject to a major data breach that put the personal information of roughly half of Americans at risk. State governments - attorneys general as well as a group of other state regulators - have taken steps to protect consumers and hold Equifax accountable.

¹⁰⁴Catherine Reagor, "[Thousands in Arizona could get money from \\$45M settlement over bad foreclosure practices](#)," *Arizona Central*, 4 January 2018.

¹⁰⁵ Ben Lane, "[Its Over: CFPB Abandons PHH Case](#)," *HousingWire*, 7 June 2018.

¹⁰⁶ North Carolina Office of the Attorney General, [Attorney General Josh Stein and Mortgage Regulators Reach \\$45 Million Settlement with PHH Mortgage Corporation](#) (press release), 3 January 2018.

In October of 2017, shortly after the Equifax breach, a balanced bipartisan group of 37 attorneys general (19 Democrats and 18 Republicans) sent a letter to Experian and TransUnion urging them to allow consumers to place free credit freezes.¹⁰⁷ Credit freezes restrict access to credit files and make it harder for identity thieves to open accounts in your name. A new federal law eliminated fees for getting and removing credit freezes across the country at the three nationwide credit bureaus on September 21st.¹⁰⁸

In another letter, 32 state attorneys general advised Congress to not preempt state data security laws. Illinois Attorney General Lisa Madigan, leader of the bipartisan effort, said “Eliminating the state’s power to help consumers minimize the threat of identity theft will only leave consumers vulnerable.”¹⁰⁹

In addition to the state attorneys general letters and their advocacy in protecting consumers, state financial regulators have worked on holding Equifax accountable for its data breach. The New York State Department of Financial Services and seven other state banking regulators reached an agreement with Equifax requiring the company to improve its data security programs and improve oversight of information security.¹¹⁰ This agreement will help to ensure that Equifax has better data security going forward.

In addition to the Equifax data security matter, states have worked together on a number of other multi-state actions, including the Uber data breach. Attorneys general from 50 states and D.C. sued Uber after the company exposed the personal information of its drivers. The parties settled on September 26th, 2018, resulting in \$148 million going towards restitution for the drivers and funds for AGOs or state government general funds.¹¹¹

Western Union Wire Fraud

In 2017, the U.S. Department of Justice and the Federal Trade Commission settled with Western Union for \$586 million, alleging that the wire transfer company allowed criminals to use its service for money laundering and fraud.¹¹² Many state attorneys general have informed their citizens that they may be eligible for compensation from the federal settlement.

¹⁰⁷ Wisconsin Department of Justice, [*AG Schimel Calls on Credit Bureaus to Halt Fees for Consumers Impacted by Massive Equifax Breach*](#) (press release), 12 October 2017.

¹⁰⁸ Lisa Weintraub Schifferle, “[Free credit freezes are coming soon](#),” *Federal Trade Commission*, 7 June 2018.

¹⁰⁹ Illinois Office of the Attorney General, [*Madigan Urges Congress To Preserve State’s Authority To Enforce Data Breach and Data Security Laws*](#) (press release), 19 March 2018.

¹¹⁰ Jonathan S Kolodner et al, “[State Regulators Reach Settlement With Equifax in Connection With Massive Data Breach](#),” *Cleary Gottlieb Cleary Enforcement Watch*, 5 July 2018.

¹¹¹ Pennsylvania Office of the Attorney General, [*Attorney General Josh Shapiro Reaches Settlement with Uber for Data Breach Involving 13,500 Drivers in PA*](#) (press release), 26 September 2018.

¹¹² Federal Trade Commission, [*Western Union Admits Anti-Money Laundering Violations and Settles Consumer Fraud Charges, Forfeits \\$586 Million in Settlement with FTC and Justice Department*](#) (press release), 19 January 2017.

In addition to this federal settlement order, 49 states and D.C. reached an additional settlement with Western Union where the company will implement an anti-fraud program to protect consumers and pay \$5 million to the states.¹¹³ Partially as a result of these actions, Western Union has increased its compliance spending by 200%, which will hopefully provide consumers safeguards against criminal activity in the future.¹¹⁴

States have also carried out multi-state actions against other companies that oversaw money transfer fraud. In 2016, attorneys general in 49 states and D.C. settled with Dallas-based MoneyGram Payment Systems for \$13 million and paid restitution to some consumers.¹¹⁵ MoneyGram has also been held accountable by the federal government, recently settling with the Federal Trade Commission for \$125 million after failing to follow a 2009 FTC order regarding fraudulent money transfers.¹¹⁶ Multi-state enforcement actions can provide a powerful deterrent against corporate wrongdoing and should stay in the enforcement toolbox.

Lawsuits against U.S. Department of Education

While many multi-state enforcement actions are centered around holding private companies accountable, a group of attorneys general has also worked in court to defend student loan borrower protections and ensure that the U.S. Department of Education enforces them.

In July of 2017, the attorneys general of 18 states and the District of Columbia sued Education Secretary Betsy DeVos for her refusal to implement regulations meant to protect student borrowers. The regulation, the borrower defense rule, is meant to make it easier for student loan borrowers to obtain debt forgiveness. One application of the rule is that students may not be obligated to cover student loan costs if the school they attend shuts down. In September, a judge ruled that DeVos's delay of the borrower defense rule was in fact illegal, siding with the states.¹¹⁷

Massachusetts AG Maura Healey led the lawsuit, and was joined by attorneys general from California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland, Minnesota, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and D.C.¹¹⁸

¹¹³ Iowa Department of Justice Office of the Attorney General, [Western Union to Enhance Anti-Wire Fraud Program and Pay \\$5 Million through 49-State Consumer Fraud Agreement](#) (press release), 31 January 2017.

¹¹⁴ Mark Huffman, "[Western Union reaches settlement with 50 states](#)," *Consumer Affairs*, 1 February 2017.

¹¹⁵ Iowa Department of Justice Office of the Attorney General, [Iowa Joins 49 State Settlement with MoneyGram](#) (press release), 31 January 2017.

¹¹⁶ Federal Trade Commission, [MoneyGram Agrees to Pay \\$125 Million to Settle Allegations that the Company Violated the FTC's 2009 Order and Breached a 2012 DOJ Deferred Prosecution Agreement](#) (press release), 8 November 2018.

¹¹⁷ Andrew Harris and Daniel Flatley, "[Betsy DeVos Loses Student Loan Lawsuit Brought by 19 States](#)," *Bloomberg*, 12 September 2018.

¹¹⁸ Michael Stratford, "[18 states, consumer groups sue DeVos over delay of student loan protections](#)," *Politico*, 6 July 2017.

Massachusetts Office of the Attorney General, [AG Healey Sues Education Secretary Betsy DeVos](#) (press release), 7 June 2017.

The borrower defense lawsuit follows a similar multi-state lawsuit against the U.S. Department of Education for not enforcing the gainful employment rule, which requires that programs “prepare students for gainful employment in a recognized occupation.” The attorneys general of 17 states and the District of Columbia joined this lawsuit.¹¹⁹ This lawsuit was filed in October of 2017 and is still pending.

Citibank Interest Rate Manipulation

While not as consumer-facing as some other multi-state lawsuits, 42 attorneys general announced a \$100 million settlement with Citibank over its fraudulent conduct with other banks in determining how to set the key benchmark interest rate known as LIBOR, which allegedly allowed it and other banks to reap enormous unjust gains when it hid its manipulations from governmental, non-profit, and institutional customers.¹²⁰ This nation-wide case was the third similar settlement with a large bank by a group of attorneys general, with total penalties to date an estimated \$420 million.

Due to the interest rate manipulation, Citibank made millions from gains in dealings with government entities and non-profit organizations. As Illinois Attorney General Lisa Madigan said, “Citibank used an inaccurate interest rate that allowed it to profit at its customers’ expense.” With this bipartisan settlement, Citibank was held accountable.¹²¹

Letters and Legislative Action

States have also stepped up their efforts to notify Congress, the Department of Justice, Department of Education, and the Consumer Financial Protection Bureau of the need to maintain protections for consumers and to oppose wrong-headed proposals, including through litigation.

Fighting Federal Bills

States often have to fight against poorly designed federal proposals, especially those that preempt stronger state laws or weaken state attorney general authority, or both. Numerous proposals before policymakers in Congress would roll back state authority to pass or enforce laws protecting consumers.

For example, in this session of Congress, a group of attorneys general announced their opposition and plan to fight two preemptive proposals that would have served predatory lenders. HR 3299, the “Protecting Consumers’ Access to Credit Act of 2017” and HR 4439, the “Modernizing Credit

¹¹⁹ Maryland Office of the Attorney General, [Attorney General Frosh Leads Coalition of State Attorneys General in Suing the U.S. Department of Education for Refusing to Enforce the Gainful Employment Rule](#) (press release), 17 October 2017.

States joining lawsuit include: Maryland, Pennsylvania, California, Connecticut, the District of Columbia, Delaware, Hawaii, Illinois, Iowa, Massachusetts, Minnesota, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia and Washington.

¹²⁰ Illinois Office of the Attorney General, [Attorney General Madigan Reaches \\$100 Million Settlement With Citibank for Manipulating Interest Rate Benchmarks](#) (press release), 15 June 2018.

¹²¹ Ibid.

Opportunities Act”, would allow payday lenders to sidestep stronger state laws and make loans with interest rates in the triple digits. Under HR 3299, lenders could use federal charters of banks to allow for preemption of state laws and charge rates higher than non-banks are allowed to charge.¹²² The bill passed the House but is still under consideration in the Senate. Meanwhile, HR 4439 has not passed either chamber of Congress.¹²³

In response to these introduced bills that would weaken state ability to enforce consumer protections, 20 attorneys general from California, Colorado, District of Columbia, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Minnesota, Mississippi, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, and Washington have joined in an effort to fight this legislation.¹²⁴ This bipartisan effort includes 18 Democratic attorneys general and 2 Republican attorneys general.

Letter to CFPB on Military Lending Act (MLA)

States have also taken action to stand up for servicemember and veteran rights. In particular, the Military Lending Act has a history of protecting servicemembers from predatory loans. The act currently sets a limit at 36% interest for servicemembers, meaning lenders cannot offer high interest, payday loans. This protection is critical, as 60% of military families report stress due to their financial situations.¹²⁵

Traditionally, federal support for the Military Lending Act has been bipartisan. The original 2006 law was passed by a Republican Congress and signed by President George W. Bush. An amendment ensuring enforcement by the CFPB was signed by President Barack Obama in 2013. However, recent reports have suggested that the CFPB under the leadership of Acting Director Mick Mulvaney will no longer examine firms for compliance of the MLA.¹²⁶

In response to concerns over the CFPB’s enforcement of the MLA, a bipartisan group of 33 attorneys general have signed onto a letter, led by Nebraska and North Carolina, to urge the CFPB and acting director Mulvaney to continue enforcing the Military Lending Act.¹²⁷ The letter is signed by 25 Democratic attorneys general, 7 Republican attorneys general, and 1 Independent. This bipartisan support for protecting servicemembers could bring the issue more attention and sway decision makers within the Consumer Financial Protection Bureau.

¹²² The Leadership Conference on Civil and Human Rights, [Oppose H.R. 3299, the “Protecting Consumers’ Access to Credit Act”](#), 13 November 2017.

¹²³ [Modernizing Credit Opportunities Act](#), H.R.4439, 115th Congress, 2017.

¹²⁴ New Mexico Office of the Attorney General, [AG Balderas Joins Bi-Partisan Effort to Fight Legislation That Would Terminate States’ Ability to Prevent Abusive Lending Practices](#) (press release), 28 June 2018.

¹²⁵ North Carolina Office of the Attorney General, [Attorney General Josh Stein Leads Coalition to Urge CFPB to Protect Military Servicemembers From Financial Exploitation](#) (press release), 23 October 2018.

¹²⁶ Kate Berry, [“Pentagon, others baffled by CFPB plan to cease military lending exams,”](#) *American Banker*, 11 October 2018.

¹²⁷ Group of 33 State attorneys general, [Letter to CFPB Acting Director Mick Mulvaney](#), 23 October 2018.

Fighting the U.S. Department of Justice

In addition to fighting the Department of Education over its failure to implement Obama-era regulations, state attorneys general have also pushed back in court to protect rights of state and local student loan servicer regulators. In *Student Loan Servicing Alliance v. Stephen C. Taylor*, 16 state attorneys general filed an amicus brief in support of allowing states to have their own student loan relief standards.¹²⁸

The amicus brief was signed by a group of 16 attorneys general, including New York, California, Connecticut, Delaware, Illinois, Iowa, Indiana, Maine, Maryland, Massachusetts, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, and Virginia. This group is made up of 15 Democratic attorneys general and 1 Republican attorney general.

On the opposite side of this lawsuit is the U.S. Department of Justice, which filed its own amicus brief asserting that student loan servicer standards should be determined only by federal law.¹²⁹ This is consistent with the rest of the current administration's approach to take consumer protection out of states' hands and replace state standards with weaker federal laws, despite states' historical role in consumer protection.

Comments to the U.S. FTC

The Federal Trade Commission (FTC) was founded in 1914, and has been a federal agency focused on consumer protection. According to the Federal Trade Commission's mission statement, the FTC focuses on "Protecting consumers and competition by preventing anticompetitive, deceptive, and unfair business practices through law enforcement, advocacy, and education without unduly burdening legitimate business activity."¹³⁰ The FTC is currently active in education through events and hearings as well as enforcement actions.

As the Federal Trade Commission opened up comments for its extensive "Competition and Consumer Protection in the 21st Century" hearings, a bipartisan group of 30 state attorneys general responded via letter in August.

In the comment, the group of attorneys general noted a number of topics on which they hoped the states and the FTC could collaborate. The AGs commented on their states' roles in consumer protection, urging collaboration in the future with the FTC and citing their ability to "investigate violations of law, enjoin harmful conduct, redress consumer harm through injunctive relief and restitution, and deter further violations through civil penalties."¹³¹

¹²⁸ New York State Office of the Attorney General, [A.G. Underwood Leads Bipartisan Amicus Brief Opposing Efforts To Undermine States' Role In Protecting Students From Abuses By Student Loan Servicers](#) (press release), 27 September 2018.

¹²⁹ Ibid.

¹³⁰ Federal Trade Commission, *About the FTC*, accessed at <https://www.ftc.gov/about-ftc>.

¹³¹ Reply Comments of Thirty-Five (35) State Attorneys General, [Letter to the Federal Trade Commission](#), 8 October 2018.

In addition to consumer protection, the attorneys general made the case that they are best suited to respond to privacy issues involving local businesses with respective state privacy laws. The AGs also commented in the letter that they would like to collaborate with the FTC on consumer issues in communication and technology as well as concerning the consumer protection issues associated with artificial intelligence and other algorithmic decision tools. The letter was signed by 6 Republican and 24 Democratic attorneys General.

Recommendations

- As the federal government becomes less likely to respond to consumer issues, states should continue to enforce the law and rely on each other for resources as they go after bad actors.
- States should continue to publicize their enforcement actions as more notoriety of bad actors can serve as a stronger deterrent.
- In addition to lawsuits, state attorneys General can put pressure on the federal government through letters, amicus briefs in private enforcement cases, and strong enforcement of state laws.
- One suggestion we received when speaking with officials from different AGOs is the need for a more formal multi-state consumer finance working group in the National Association of Attorneys General. While similar groups exist for coordination on important issues such as the opioid crisis, we are not aware of any similar consumer protection-themed group where state attorneys general can discuss ideas and share regular updates across state lines.
- In their settlement orders and news releases about their enforcement victories, states should provide more information on where civil penalties go (consumer restitution, state general fund, state AGO's office, consumer or investor education, etc.).

Conclusion

Whether or not states choose to brand their AGO consumer protection branches as “mini-CFPBs,” AGs, other consumer protection departments and local agencies have a crucial role in protecting consumers. Attorneys general could follow each other's leads in establishing increased enforcement and asking for higher consumer protection budgets. AG offices must also enforce their states' Unfair and Deceptive Acts and Practices laws to the best of their ability, being aggressive in holding financial wrongdoers accountable.

In addition to individual state enforcement actions, attorneys general should continue to work together and work together more. As seen in this report, state AG Offices have been able to work together to bring actions holding industry accountable, send letters to convey shared state concerns, fight federal legislation limiting states' rights to defend consumers, and work together to hold the federal government accountable. If states work together in a bipartisan manner, they can protect consumers as the federal government's enforcement has weakened.

In addition to attorneys general, state legislatures also have an opportunity to protect consumers. While state AGs can do their best to enforce UDAP protections, it is up to state legislatures to improve these statutes to make them more accessible for consumers and authorities alike. State legislatures can also make an impact by implementing state-level student loan protections including establishing ombudsman and setting up student loan bill of rights in their states.

Finally, states are not the only local governments that can implement their own consumer protections. Cities and counties across the state have their own consumer protection offices and have the ability to educate consumers and enforce the law. Local governments should check their authority to establish their own offices and consider providing funding for consumer protection efforts.

Appendices

Appendix A: Top 10 Most Complained About Student Loan Servicers¹³²

Top 10 Most-Complained-About Student Loan Servicers, 2017

Rank	Company	Number of Federal Complaints	Percent of Total Federal Complaints	Number of Private Complaints	Percent of Total Private Complaints	Total Complaints	Percent of Total Student Loan Complaints
1	Navient Solutions, LLC.	6,708	62.99%	4,185	64.14%	10,893	63.42%
2	AES/PHEAA	1,620	15.21%	396	6.07%	2,016	11.74%
3	Nelnet, Inc.	650	6.10%	138	2.11%	788	4.59%
4	Great Lakes	337	3.16%	46	0.70%	383	2.23%
5	Sallie Mae	35	0.33%	340	5.21%	375	2.18%
6	Wells Fargo & Company	15	0.14%	215	3.30%	230	1.34%
7	ACS Education Services	146	1.37%	76	1.16%	222	1.29%
8	Discover Bank	8	0.08%	201	3.08%	209	1.22%

¹³² Investopedia, *The Worst Student Loan Servicers Going Into 2018*, accessed at <https://www.investopedia.com/personal-finance/worst-student-loan-servicers-going-2018/>, 6 October 2018.

Appendix B: Detailed Description of State Student Loan Servicing Reforms

Connecticut:

Background: The state of Connecticut passed HB 6915 “An Act Concerning A Student Loan Bill Of Rights” in 2015, which went into effect on July 1st, 2016. The student loan servicer regulations in Connecticut are through the Department of Banking.¹³³

Licensing: Any person who services student education loans in Connecticut must be licensed with the Banking Commissioner, effective July 1st, 2016. The act exempts some banks and credit unions. The commissioner must adopt servicer regulations and investigate and enforce actions against violators.

*Ombudsman:*¹³⁴ The act establishes the position of student loan borrower ombudsman within the Department of Banking. The responsibilities of the student loan ombudsman include:

- Reviewing and attempting to resolve any complaints from student loan borrowers
- Analyzing data on student loan borrower complaints
- Educating student loan borrowers and helping them understand their rights and responsibilities regarding loans
- Providing information to legislators and the public while making recommendations
- Making recommendations for state and local laws and regulations
- Reviewing student loan history for student borrowers
- Spreading information about the availability of the Ombudsman position to help borrowers

Student Loan Bill of Rights: Connecticut established a “Student Loan Bill of Rights” within HB 6915. A list, and summaries of each point, are as follows: ¹³⁵

- 1) Default Aversion Services - Servicers must help borrowers avoid defaulting on loans
- 2) Notice of Transfer - Borrowers must be notified when loan transferred to new servicer
- 3) Application of Payments - Payments must be applied to outstanding balance on date of payment and in beneficial way to borrower
- 4) Books and Records - Servicers must keep records of payment amounts
- 5) Periodic Billing Statements - Servicers must send balance of payments at least quarterly
- 6) Payoff Statements - The borrower has right to complete and accurate payoff statement
- 7) Responding to Borrower Inquiries - Servicers must respond to borrower inquiries in timely and accurate measure
- 8) Fees - Servicers must inform borrowers of when/why fees occur
- 9) Credit Reporting - Servicers must provide accurate information to credit bureaus and must investigate inaccurate credit reporting about borrowers
- 10) Compliance with Applicable Federal Laws - Must comply with existing federal law

¹³³ Connecticut State Department of Banking, *Student Loan Servicer Licensing*, accessed at <https://www.ct.gov/dob/cwp/view.asp?a=2232&q=580924>.

¹³⁴ [An Act Concerning A Student Loan Bill of Rights](#), HB 6915, 2015.

¹³⁵ Connecticut State Department of Banking, *Highlights*, accessed at https://www.ct.gov/dob/lib/dob/consumer_credit_nonhtml/student_loan_standards_7-1-17.pdf.

California:

Background: California passed the Student Loan Servicing Act (Assembly Bill 2251) in September 2016, as well as amending the Act in the 2018 session. The enforcement for this bill will be within the Department of Business Oversight, specifically with the Commissioner of Business Oversight.¹³⁶

Licensing: The 2016 law requires the licensing, regulation, and oversight of student loan servicers and prohibits servicing a student loan without a license, unless exempt from the requirement. The bill requires servicers to complete an application fee, sign the application under penalty of perjury, and submit a criminal background check. It also requires servicers to file reports with the Commissioner of Business Oversight and authorizes the commissioner to enforce provisions by

- Enforcing regulations
- Performing investigations
- Enforcing provisions in a hearing or court
- Suspending licenses

A more detailed version of the law can be found here:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2251

Illinois:

Background: The Illinois House and Senate Overrode the Governor's Veto to pass SB 1351, the Illinois Student Loan Servicing Act, which will go into effect December 31st, 2018.¹³⁷

Licensing: The act prohibits servicers from giving student loans without first obtaining a license. There are some exceptions for federal or state chartered banks and other institutions. The Secretary of Financial and Professional Regulation is in charge of licensing servicers and enacting regulations.

Ombudsman: The position of Student Loan Ombudsman is established within the Office of the Attorney General. The Ombudsman is to "provide timely assistance to student loan borrowers" and to resolve complaints from borrowers. The ombudsman will also compile and analyze complaint data.

*Student Loan Bill of Rights:*¹³⁸ Article 5 of the act is called "Student Loan Bill of Rights." The act prohibits unfair or deceptive practices towards borrowers, and includes the following provisions:

1. Payment processing
2. Fees
3. Billing statements
4. Payment histories
5. Specialized assistance

¹³⁶ [Student Loan Servicing Act](#), Assembly Bill 2251, 2016.

¹³⁷ John L. Culhane, "[Illinois lawmakers override governor's veto of student loan servicing bill](#)," *Ballard Spahr LLP Consumer Finance Monitor*, 9 November 2017.

¹³⁸ *Ibid.*

6. Income driven repayment plan certifications
7. Information provided to private student loan borrowers
8. Cosigner release
9. Payoff statements
10. Transfer of servicing
11. Requests for assistance and account dispute resolution

Washington:

Background: In Washington, SB 6029 was signed into law by the Governor in March of 2018. The law went into effect in June.¹³⁹

Licensing: There are about a dozen federal student loan servicers in the state and they will be licensed by the Department of Financial Institutions.

Ombudsman: A student loan advocate will be established to help student loan borrowers with educational outreach and advise. The law will provide \$245,000 for the office, which will be run within the Washington Student Achievement Council.¹⁴⁰ The advocate, similar to ombudsman roles in other states, will do a variety of tasks, including:¹⁴¹

- Review and compile information on borrower complaints
- Analyze rules and policies related to student loans
- Assist borrowers in applying for loan forgiveness or taking other actions
- Establish a borrower education course

*Servicer requirements:*¹⁴²

- Servicers must provide free information about repayment options
- Servicers must provide contact information for the Advocate
- Servicers must provide borrowers with information about fees assessed
- Servicers must maintain written and electronic loan records
- Servicers must respond in timely manner to borrower requests (15 days)
- Servicers must notify borrower when transferring servicing rights
- Servicers must provide information about effects of refinancing loans

¹³⁹ Katherine Long, "[Washington's new law regulating student-loan servicers could face legal challenge from feds](#)," *The Seattle Times*, 21 March 2018.

¹⁴⁰ Ibid.

¹⁴¹ Jeremy C. Sairsingh, "[State of Washington Enacts Student Loan Servicing Law](#)," *Ballard Spahr LLP Consumer Finance Monitor*, 16 March 2018.

¹⁴² Ibid.

Washington, DC:

Background: In 2016, Washington, DC enacted the “Student Loan Ombudsman Establishment and Servicing Regulation Amendment Act of 2016”. The Office of the Student Loan Ombudsman will be within the Department of Insurance, Securities, and Banking.¹⁴³

*Licensing:*¹⁴⁴ The act prohibits operation as a student loan servicer in the District without obtaining a license. Some federally chartered banks and other associations are exempt. A servicer must complete an application, pay application fees, and provide audited financial statements. Licenses expire after just over a year of operating.

Ombudsman: The ombudsman, appointed by the Commissioner of the Department will

- Assist in enforcement of licensing
- Review and attempt to resolve complaints from borrowers
- Analyze data on student borrower complaints
- Provide information to assist student loan borrowers and make sure they are informed of their rights
- Make recommendations to the commissioner
- Analyze and monitor federal and local laws regarding student loan borrowers
- Review student loan history of student loan borrowers

In addition to day-to-day responsibilities, the ombudsman will also help develop a student loan borrower bill of rights and establish an education course to assist borrowers.

*Student Loan Bill of Rights*¹⁴⁵: Basic rights of DC student borrowers include rights to

1. Transparent pricing and terms
2. Receive non-abusive products
3. Fair and responsible underwriting
4. Fair collection practices
5. Quality customer service

Virginia:

Background: Virginia passed HB 1138/ SB 394, Office of the Qualified Education Loan Ombudsman, in early 2018. the Governor signed the bill into law in March, 2018. ¹⁴⁶

*Ombudsman:*¹⁴⁷ The Office of the Qualified Education Loan Ombudsman is established within the State Council of Higher Education for Virginia. The duties of the Ombudsman include:

- Reviewing and resolving complaints from education loan borrowers
- Analyzing data on complaints

¹⁴³ [Student Loan Ombudsman Establishment and Servicing Regulation Amendment Act of 2016](#), Act 21-571, 2016.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ [Office of the Qualified Education Loan Ombudsman](#), HB 1138, 2018 Session.

¹⁴⁷ Ibid.

- Helping loan borrowers understand their rights and responsibilities for their loans
- Providing information regarding problems and concerns of education loan borrowers
- Analyzing and developing laws and policies
- Educating student loan borrowers, including establishing a borrower education course by December 1st, 2019

Maryland:

Background: In the 2018 session, Maryland brought forward HB 1634/ SB 1068, the Financial Consumer Protection Act of 2018. Among a variety of other actions, it establishes a student loan ombudsman. Governor Hogan signed the law in May, and it becomes effective October, 2018. In addition to the student loan ombudsman, the Maryland Financial Consumer Protection Commission held an October, 2018 hearing on whether to regulate student loan servicers.¹⁴⁸

Ombudsman: ¹⁴⁹The Commissioner of Financial Regulation is tasked with establishing the position of Student Loan Ombudsman. The Ombudsman's tasks will include:

- Receiving, reviewing, and attempting to resolve complaints from student loan borrowers
- Analyzing complaint data
- Helping student borrowers understand rights and responsibilities
- Providing information about the availability of the ombudsman to address concerns
- Analyzing and monitor federal, state and local laws relating to student loan borrowers
- Making recommendations on how to resolve problems and change laws to ensure a fair and transparent industry in Maryland

¹⁴⁸ Maryland Financial Consumer Protection Commission Schedule, accessed at <http://dls.maryland.gov/policy-areas/maryland-financial-consumer-protection-commission>.

¹⁴⁹ [Financial Consumer Protection Act of 2018](#), HB 1634, 2018 Session.

*Appendix C: List of Financial Empowerment Center Locations*¹⁵⁰

Antigua and Barbuda
Atlanta, GA
Aurora, IL
Baltimore, MD
City of Akron/Summit County, OH
City of Memphis/Shelby County, TN
Denver, CO
Detroit, MI
Erie, PA
Greenville County, SC
Hawaii County, HI
Houston, TX
Lansing, MI
Miami, FL
Nashville, TN
New Haven, CT
New York, NY
Philadelphia, PA
Pittsburgh, PA
Polk County, IA
Roanoke, VA
Rochester, NY
Sacramento, CA
San Antonio, TX
San Francisco, CA
Shreveport, LA
Syracuse, NY
Washington, DC

¹⁵⁰ Cities for Financial Empowerment Fund, *Financial Empowerment Center Replication Initiative*, accessed at <http://cfefund.org/project/financial-empowerment-centers/>.

*Appendix D: Illinois Top 10 Consumer Complaints*¹⁵¹

CATEGORY	# OF COMPLAINTS
1. Consumer Debt (mortgages, collection agencies, banks)	2,783
2. Identity Theft (government document fraud, credit cards, utilities, data breaches)	2,391
3. Promotions/Schemes (phone scams, investment schemes, lottery scams, phishing)	2,387
4. Construction/Home Improvement (remodeling, roofs and gutters, heating and cooling, plumbing)	2,094
5. Telecommunications (telemarketing, cable and satellite TV, phone service and repairs, cell phones)	1,851
6. Education (for-profit schools, student loan debt, loan counseling)	1,691
7. Used Auto Sales/Motor Vehicles (as-is used cars, financing, warranties)	1,648
8. Internet/Mail Order Products (Internet and catalog purchases, TV and radio advertising)	955
9. Motor Vehicle/Non-Warranty Repair (collision, engines, oil changes and tune-ups)	677
10. New Auto Sales/Motor Vehicles (financing, defects, advertising)	668

¹⁵¹ Illinois Office of the Attorney General, [Madigan Announces Top 10 Consumer Complaints](#) (press release), 6 March 2017