

Will the States Follow the Trail Left for them by the CFPB?

FEBRUARY 6, 2025

Under Director Rohit Chopra, the CFPB has laid out a bold blueprint for stronger state-level consumer protections. As its tenure ends, the agency urges states to follow its lead in enhancing consumer safeguards.



BARBARA BOCCIA
CRCM, MBA, JD
SENIOR CONTRIBUTOR



The Consumer Financial Protection Bureau (CFPB) under Director Rohit Chopra (October, 2021 – January, 2025) vigorously pushed the boundaries of many consumer protection regulations to capacity, especially the principle-based Unfair, Deceptive or Abusive Acts or Practices (UDAAP) regulation. Amidst the flurry of activity over the last few months as it wound down its course under former President Biden, the CFPB pulled together a defining blueprint for the states: “[CFPB Strengthening State-Level Consumer Protections: Promoting Consumer Protection Federalism.](#)” It’s essentially a 33-page roadmap for carrying forward Chopra’s assertive vision and mission for consumer protection at the state and grassroots level.

This roadmap begins with a robust history lesson explaining the legacy of federal-state cooperation in consumer protection. There are several examples of

how the CFPB under Chopra joined forces with State Attorneys General to investigate violations of the Consumer Financial Protection Act (CFPA) to bring relief to consumers, such as the \$2 billion landmark settlement with Navient student loan servicer.

Clearly, this blueprint calls for states to expand their consumer protection laws, highlighting the view that federal law is a “floor,” and not a “ceiling,” for the protection of consumers:

“*When Congress passed the CFPA, it sought to reinforce the states’ power to protect consumers. Congress intended federal law to establish “minimum standards” for consumer protection and not to “preclude [] the States from enacting more protective standards.”*

We are also reminded that the states have the ability to enforce the CFPA, (which includes UDAAP), as set forth in a 2022 interpretive rule: [Authority of States to Enforce the Consumer Financial Protection Act of 2010](#):

“The CFPB issued an interpretive rule explaining that States can enforce the Consumer Financial Protection Act, including the provision making it unlawful for covered persons or service providers to violate any provision of federal consumer financial protection law; that States can pursue claims and actions against a broader range of entities than the CFPB; and that CFPB enforcement actions do not put a halt to state actions.”

In his farewell address, former President Biden warned of the “tech-industrial complex,” and those concerns were echoed by Chopra in expressing concern about an increasingly small number of

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firms exerting control over our economic lives and domination by economic elites:

“ Alexis de Tocqueville warned that the “industrial aristocracy” was “the direction in which the friends of democracy should constantly fix their anxious gaze; for if ever aristocracy and the permanent inequality of social conditions were to infiltrate the world once again, it is predictable that this is the door by which they would enter.”

The underlying premise is that if there are fewer firms competing in the marketplace, then it would be easier for those firms to gain leverage over consumers and coerce them into accepting lower quality products and services, paying higher prices (often in the form of so-called “junk fees”), or otherwise committing Unfair, Deceptive, or Abusive Acts or Practices (UDAAP). There are additional concerns voiced relating to the use and abuse of consumer data. For these reasons, and against this backdrop, the CFPB under Rohit Chopra issued its blueprint with the following seven recommendations for states to strengthen state-level consumer protections and update their laws and regulations to meet evolving risks.

1. Incorporate “Abusive” Into State Law

In order to understand the first recommendation, to incorporate the UDAAP “Abusive” standard into state law, it would be useful to have some additional context. Initially, Title X of the Dodd-Frank Act (DFA), also known as the Consumer Financial Protection Act of 2010 (CFPA), created the CFPB following the 2008 financial crisis. It also created the “Abusive” standard to form UDAAP – essentially turning “UDAP” (Unfair or Deceptive Acts or Practices) into “UDAAP” (Unfair, Deceptive or Abusive Acts or Practices).

UDAP remains more broadly enforceable under Section 5 of the FTC (Federal Trade Commission) Act in any industry, and by prudential regulators in financial services, and applies to consumers and commercial entities. Many states have longstanding (i.e., “old”) laws on the books that align with UDAP protections.

However, there are several important attributes that distinguish the “Abusive” element of UDAAP. For example, unlike the “Unfair” standard, “Abusive” requires no showing of a consumer’s “substantial” injury to establish liability. This makes it much easier to bring UDAAP enforcement actions based on a more general theory of “abusive conduct.”

Also, the CFPB under Director Chopra provided an expansive explanation of the “Abusive” standard in the 18-page [Policy Statement of Abusive Acts or Practices](#), issued in April, 2023. As such, the “Abusive” standard has evolved to be more fluid than the “Deceptive” standard when applying it to modern business practices. For example, it captures abusive conduct relating to “material interference” that obscures a consumer’s understanding of important product features through tactics such as pop-up or drop-down boxes, multiple click-throughs, or other types of “dark patterns” that may not easily fit the “Deceptive” standard requirements.

Other examples of abusive conduct relate to situations where an entity takes “unreasonable advantage” of a consumer due to unequal bargaining power, a gap in understanding, or the consumer’s reliance upon the entity to act in their best interest. In other words, generally the burden of proof for “Abusive” is thought to be lower than the “Unfair” or “Deceptive” standards.

It is within this context that the first recommendation in the roadmap is to update state laws to include the “Abusive” standard, (if they have not already done so.) It is suggested that states adopt a rule of construction that aligns with the CFPB’s 2023 Policy Statement on Abusive Acts or Practices to facilitate consistent enforcement of consumer protection laws across jurisdictions:

“By incorporating “abusive” into their consumer protection laws, states can fill the gaps left by similar prohibitions on unfair or deceptive practices and deter practices that distort competition in the marketplace. State attorneys general and regulators may already combat abusive practices directly, in either state or federal court, under the CFPA. By incorporating “abusive” into their general consumer protection statutes however, states will be able to combat abusive practices in markets beyond consumer financial products and services.”

2. Stronger Remedies & Tools For Investigation and Enforcement

The second recommendation is that state laws be updated to provide robust investigative powers and market-monitoring authority for enforcers of consumer protection laws, along with a broad range of legal or equitable relief “without limitation.” That would include the ability to hold corporate officers personally liable in egregious consumer protection cases.

“State law often permits law enforcement to hold officers or controlling shareholders individually liable, and the CFPB recommends that state law enforcement agencies consider how officer liability plays a role in their programs.”

It is also suggested that states can produce a “force multiplier” by granting municipalities and cities authority to bring consumer protection cases, as has already been done in some states.

3. Eliminate Requirements to Prove Monetary Injuries

The third recommendation for states relates to the concept that consumer harm from violations of consumer laws, especially UDAAP, can have an impact on consumers well beyond just an economic injury:

“Unfair, deceptive, and abusive acts or practices can have profound consequences on consumers’ lives—including lost time or ability to work or becoming a more likely victim of fraud and identity theft. Many acts or practices cost people money, but sometimes that cost is hard to quantify, sometimes the harm has not occurred yet, and sometimes unfair, deceptive, or abusive practices cause non-monetary harm.”

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Therefore, it is recommended that states update their laws to remove any requirements to prove precise monetary harm, “reliance” upon a deceptive statement, or prove that there is a broader public impact in order for a consumer to advance a UDAAP claim.

“*In order to protect consumers from serious but hard-to-quantify harms, states should ensure that their laws can be enforced without a requirement to prove ascertainable loss and without a requirement to prove reliance on a misleading claim, and should ensure claims can reach non-economic injuries, including lost time, loss of privacy, or loss of security. Relatedly, states should ensure that the “economic loss” doctrine – holding that plaintiffs cannot recover in tort economic losses to which their entitlement comes from a contract – does not apply to claims arising under their consumer protection laws.*”

4. Exercise Authority to Ensure Protections Also Protect Businesses

The fourth recommendation relates to the reality of modern lifestyles, and the fact that the boundary between one’s personal or household finances and those of their businesses may be hazy – or not exist at all. The products and services businesses use, and the way they interact with financial institutions, may not be any different than other consumers. Yet, a business may not be protected in the same way as other consumers even if they suffer the same harms.

Therefore, included in the roadmap is a recommendation that states exercise or expand their consumer protection authority to protect businesses, particularly in relation to UDAAP laws. This is the suggestion for updating the definition of “consumer”:

“Consumer. The term “consumer” means an individual, company, or organization, or an agent, trustee, or representative acting on behalf of an individual, company, or organization.”

5. Revitalize Private Enforcement

The next recommendation relates to an observation that losses from burglaries, robberies, motor vehicle thefts and larceny claims are just as injurious to victims as injuries from financial crimes, yet government resources allocated to consumer protection enforcement pale in comparison to local, state and federal criminal enforcement. Therefore, it is suggested that changes be made to allow for independent actions, as discussed below:

“*To do so, legislatures should consider explicit and carefully crafted amendments to UDAAP laws to:*

- *Create representational or qui tam causes of action on behalf of the state modeled after California’s Private Attorney General Act or the False Claims Act,*
- *Add “public” injunctive relief as a remedy, similar to California’s Unfair Competition Law, and*

- *Give nonprofit and public interest organizations authority to prosecute damages cases against companies similar to the District of Columbia’s Consumer Protection Procedures Act.”*

6. Provide Strong & Enforceable Consumer Data and Privacy Rights

Next, there is concern for the evolving ways in which consumer’s personal data continues to be harvested, monetized, and put at risk. Therefore, the sixth recommendation suggests that the states pass laws to provide their residents with additional protections, as some already have, including the following:

- “Give consumers a right to delete data about them.
- Require companies to only collect the minimum data necessary to provide their product or service.
- Prohibit use of collected data for reasons other than providing the consumer a product or service they have requested.
- Prohibit the sale or transfer of personal data to third parties (including data brokers) that are unrelated to the provision of a requested product or service, with limited exceptions like credit bureaus.
- Prohibit certain uses of data, including (1) use of personal data on minors for purposes of advertising; (2) use of information about medical debts for credit underwriting; (3) use of financial information for targeted advertising or product pricing; and (4) use of public records for purposes of determining eligibility for receipt of public utilities or other essential services.
- Enshrine protections to ensure that consumers can meaningfully exercise their rights, such as imposing time limits on companies to respond to consumers’ data-related requests, prohibiting companies from retaliating against consumers for exercising their data privacy rights, prohibiting conditioning the provision of services based on consenting to certain data uses, and requiring specific consent for the collection, use, and sale of consumer data.
- Remove exemptions in state consumer data privacy laws for financial institutions or data covered by the Gramm-Leach-Bliley Act.
- Provide a strong private right of action and public enforcement mechanism.
- Hire personnel with technology backgrounds and expertise into public enforcement teams.”

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7. Eliminate Requirements to Prove Monetary Injuries

One of the hallmarks of the CFPB's actions under Director Chopra has been the battle against so-called "junk fees." In this roadmap for the states, it is suggested that a bright-line prohibition on "junk fees" would help safeguard consumers as well as competition, in support of fair and transparent pricing:

“States should consider adding language along the following lines to their state prohibitions on unfair, deceptive, and/or abusive acts or practices:

§ Prohibition of Junk Fees

(a) Hidden Fees Prohibited. It is an unfair and deceptive practice for any business to offer, display, or advertise any price of a good or service without clearly and conspicuously disclosing the total price.

(1) In any offer, display, or advertisement that represents any price of a good or service, a business must disclose the total price more prominently than any other pricing information. However, where the final amount of payment for the transaction is displayed, the final amount of payment must be disclosed more prominently than, or as prominently as, the total price.

(2) A business must disclose clearly and conspicuously, before the consumer consents to pay for any good or service:

- i. The nature, purpose, and amount of any fee or charge imposed on the transaction that has been excluded from total price and the identity of the good or service for which the fee or charge is imposed; and*
- ii. The final amount of payment for the transaction.”*

Thus, the CFPB under Director Chopra tried to cement its legacy and provide the states - those that will listen - a clear direction for continuing its path while under the new Trump administration.

Accompanying this roadmap, the CFPB released a 363-page [Compendium of Recent CFPB Guidance](#). The Compendium was intended to preserve the “considered judgment, reasoning, knowledge, and expertise” of the CFPB under Director Chopra for the courts, to the extent that they find the agency interpretation useful, as well as for all other interested parties, (i.e., the states), safeguarding these documents for the future in perhaps a less favorable consumer protection environment at the federal level.

Whether the States will heed the call remains to be seen.

Stay tuned!

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