CLIENT ALERT

State AGs File Amicus Brief in Support of Union Challenging CFPB Shutdown

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As the Trump administration continues its efforts to scale back federal agencies, we expect to see increased efforts by state attorneys general to both combat the Trump administration's efforts and fill the regulatory void left by the administration's sweeping changes to the federal regulatory landscape.

On February 21, 2025, state attorneys general filed an amicus brief in support of the National Treasury Employees Union's legal challenge to the Trump administration's virtual shutdown of the Consumer Financial Protection Bureau (CFPB). Led by New York, New Jersey, and Washington, D.C., 23 attorneys general joined the brief arguing that the Trump administration's "actions to effectively shutter the CFPB go well beyond the normal shift in enforcement priorities that accompanies any change in presidential administration—they amount to a total dereliction of *all* mandatory statutory duties." The dereliction of mandatory duties, according to the brief, will cause irreparable harm to the states.

The alleged irreparable harm facing the states and their residents includes (i) loss of the CFPB's services, including its consumer-complaint system and the Civil Penalty Fund; (ii) lack of a federal regulator examining very large banks, leaving a regulatory vacuum and disadvantaging state-chartered bank competitors; and (iii) substantially increased enforcement burden on the states.

Without a functioning CFPB, states will lose access to the CFPB's services and valuable data, including its consumer-complaint system, which takes in approximately 25,000 complaints per week. While some states have similar systems in place, the states cannot replace the CFPB's nationwide complaint intake system and database, especially when it comes to businesses for which the CFPB is the lone federal regulator (e.g., nonbank mortgage lenders). The CFPB also collects and maintains data states rely on to follow nationwide trends and identify issues that may negatively affect consumers. Also inactive is the CFPB's Civil Penalty Fund, which the CFPB uses to distribute compensation to victims whom it has determined will not receive adequate compensation or restitution from wrongdoers. The loss of these services and data, according to the amicus brief, warrants injunctive relief against the administration's cuts to the CFPB.

Because the CFPB is the sole federal regulator examining very large banks, an inactive CFPB also leaves a regulatory vacuum. The states argue that "very large financial institutions that compete with state-chartered banks will have carte blanche to loosen their regulatory compliance and profit accordingly," while "state-chartered banks will remain subject to state supervision for their compliance with the same laws." Without consistent supervision, the dual banking system will suffer from a regulatory arbitrage, resulting "in a race to the bottom." Moreover, only the CFPB, and not the states, may supervise and bring enforcement actions against national banks related to abusive, in addition to unfair and deceptive, practices under the Consumer Financial Protection Act. Without the CFPB, there is no regulator empowered by federal law to target abusive practices by some of the nation's largest banks. This will leave states' residents with riskier products offered by unsupervised banks and state-chartered banks with fewer customers and less goodwill once undercut by unsupervised banks, warranting injunctive relief.

A dismantled CFPB will shift the enforcement burden to the states left to fill the void left by the CFPB. According to the amicus brief, the "loss of CFPB's partnership has concrete and far-reaching implications: from collaborating on supervisory examinations, to sharing of complaints and trend data, to providing training, to partnering on joint investigations and litigations, the CFPB has been a force multiplier for states' consumer-protection efforts." Without the CFPB's partnership, states will be forced to fill the regulatory void concerning the supervision of many of the 200-plus large banks that are state-chartered, with more than $10 billion in assets each. For smaller state-chartered banks that do not fall within the CFPB's examination authority, states will lose essential resources and training provided by the CFPB. And without the CFPB to coordinate multistate examinations and data collection, investigations will become less efficient for both states and subject institutions. The abrupt shuttering of the CFPB will also disrupt ongoing litigation and place the responsibility for joint litigation solely on the states. The loss of their partnership with the CFPB thus merits injunctive relief, according to the states.

By emphasizing the nature of the potential regulatory void created by a non-functioning CFPB and the resulting increase in states' enforcement burden, the amicus brief provides insight into how states may step up their consumer protection regulation in the coming months and years. Without the benefit of the CFPB's supervision and expertise, states will likely reallocate their resources to regulate certain industries that drew attention from the previous administration's CFPB. For instance, the amicus brief specifically mentions nonbank mortgage lenders, payday lenders, and digital payments as industries where the lack of CFPB oversight will be problematic. It is likely that states will coordinate to initiate multistate examinations, investigations, and enforcement actions in place of the CFPB and take particular interest where missing CFPB supervision is most likely to lead to consumer harm.

For further discussion on the topic of state attorney general enforcement priorities, please join us next Thursday, March 6, at 12:00p.m. ET for a brief panel discussion, featuring guest speaker Ian Mandel, a political and corporate strategist with deep knowledge of state-level politics.

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