

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Authority of States to Enforce the Consumer Financial Protection Act of 2010

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interpretive rule.

SUMMARY: Section 1042 of the Consumer Financial Protection Act of 2010 (CFPA) generally authorizes States to enforce the CFPA's provisions. The Consumer Financial Protection Bureau (Bureau) is issuing this interpretive rule to provide further clarity regarding the scope of State enforcement under section 1042 and related provisions of the CFPA.

Specifically, the Bureau is issuing the following interpretations: (1) section 1042 allows States to enforce any provision of the CFPA, including section 1036(a)(1)(A), a provision that makes it unlawful for covered persons or service providers to violate the Federal consumer financial laws; (2) the limitations on the Bureau's authority in sections 1027 and 1029 generally do not constrain States' enforcement authority under section 1042; and (3) section 1042 does not restrict States from bringing concurrent enforcement actions with the Bureau.

DATES: This interpretive rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Shiva Nagaraj, Senior Counsel, Legal Division, (202) 435-7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Financial Protection Act of 2010 (CFPA) establishes the Consumer Financial Protection Bureau as the Federal government’s primary regulator of consumer financial products and services.¹ The Bureau is charged with administering, interpreting, and enforcing the “Federal consumer financial laws,” a category that includes the CFPA itself, 18 enumerated consumer laws (such as the Fair Credit Reporting Act and the Truth in Lending Act), and the laws for which authorities were transferred to the Bureau under subtitles F and H of the CFPA, as well as rules and orders issued by the Bureau under any of these laws.²

However, the Bureau is not the only enforcer of these laws. The CFPA recognizes the important role that States play in overseeing the consumer financial marketplace.³ As noted in a 2010 Senate report on the financial crisis that precipitated the CFPA, “[w]here [F]ederal regulators refused to act, the [S]tates stepped into the breach.”⁴ These efforts were stymied, however, because “rather than supporting [States’] anti-predatory lending laws, [F]ederal regulators preempted them.”⁵ Thus, Congress provided States with their own Bureau enforcement authority.

Generally, State attorneys general may “bring a civil action in the name of such State in any district court of the United States in that State or in State court that is located in that State and that has jurisdiction over the defendant, to enforce provisions of this title [i.e., the CFPA] or regulations issued under this title, and to secure remedies under provisions of this title or

¹ Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111-203, 124 Stat. 1376, 1955-2113 (2010).

² 12 U.S.C. 5481(14), (12).

³ As defined in 12 U.S.C. 5481(27), “[t]he term ‘State’ means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands or any federally recognized Indian tribe, as defined by the Secretary of the Interior under section 5131(a) of title 25.”

⁴ S. Rep. No. 111-176, at 16 (2010), <https://www.congress.gov/congressional-report/111th-congress/senate-report/176/1>.

⁵ *Id.*

remedies otherwise provided under other law.”⁶ Likewise, a “state regulator may bring a civil action or other appropriate proceeding to enforce the provisions of this title or regulations issued under this title with respect to any entity that is State-chartered, incorporated, licensed, or otherwise authorized to do business under State law … and to secure remedies under provisions of this title or remedies otherwise provided under other provisions of law with respect to such an entity.”⁷ State attorneys general and regulators are required to consult the Bureau before initiating an action or proceeding under section 1042, in accordance with section 1042(b) and 12 CFR part 1082.

Section 1042, as one court has explained, allows States to vindicate their “fundamental right to protect their citizens and prevent harmful conduct from occurring in their jurisdictions” and gives them tools “to pick up slack when the [F]ederal Government fails to enforce and regulate.”⁸

Since the CFPA was enacted, many States have relied on section 1042 to bring civil enforcement actions, on their own or in joint or coordinated filings with the Bureau, to enforce a provision of the CFPA that prohibits unfair, deceptive, and abusive acts and practices in connection with the offering or provision of consumer financial products or services.⁹ Some States have also joined the Bureau in alleging violations of the CFPA’s prohibition on covered persons and service providers violating other enumerated Federal consumer financial laws, but

⁶ 12 U.S.C. 5552(a)(1). With respect to national banks or Federal savings associations, State attorneys general may only “bring a civil action in the name of such State” in order “to enforce a regulation prescribed by the Bureau under a provision of this title and to secure remedies under provisions of this title or remedies otherwise provided under other law.” 12 U.S.C. 5552(a)(2).

⁷ *Id.*

⁸ *Pennsylvania v. Navient Corp.*, 967 F.3d 273, 286 (3d Cir. 2020).

⁹ 12 U.S.C. 5536(a)(1)(B); *see also id.* 5531.

few have pursued such claims in their own CFPA actions. The Bureau is issuing this interpretive rule regarding several important aspects of section 1042.¹⁰

III. Analysis

A. States' authority under section 1042 to address violations of Federal consumer financial laws

CFPA section 1042 authorizes State attorneys general and State regulators to bring an enforcement action to pursue violations of section 1036(a)(1)(A), which makes it unlawful for a covered person or service provider to violate any Federal consumer financial law.¹¹

As noted above, section 1042(a) generally authorizes States to bring civil actions “to enforce provisions of [the CFPA].” One such provision of the CFPA, section 1036(a)(1)(B), states that it is unlawful for any “covered person” or “service provider” to “engage in any unfair, deceptive, or abusive act or practice.”¹² States can thus rely on section 1042(a) to pursue an enforcement action against a covered person or service provider that commits an unfair, deceptive, or abusive act or practice, and many States have filed such enforcement actions.

Additionally, another provision of the CFPA, section 1036(a)(1)(A), declares it unlawful for any “covered person” or “service provider” to “offer or provide to a consumer any financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law.”¹³ Because section 1036(a)(1)(A) is a “provision of [the CFPA],” States may use their section 1042 authority to enforce section 1036(a)(1)(A) against covered persons or service providers. Thus, when a

¹⁰ This interpretive rule is not intended as an exhaustive interpretation of section 1042.

¹¹ As noted above, however, section 1042 does not allow State attorneys general to bring an enforcement action against national banks or Federal savings associations, except for violations of “a regulation prescribed by the Bureau under a provision of this title.” 12 U.S.C. 5552(a)(2).

¹² 12 U.S.C. 5536(a)(1)(B).

¹³ 12 U.S.C. 5536(a)(1)(A); *see also id.* 5481(6) (defining “covered person”), 5481(26) (defining “service provider”).

covered person or service provider violates any of the Federal consumer financial laws, section 1042 gives States authority to address that violation by bringing a claim under section 1036(a)(1)(A) of the CFPA.

As explained above, the “Federal consumer financial laws” are the CFPA, the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H of the CFPA, and any rule or order prescribed by the Bureau under the CFPA, an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H. The enumerated consumer laws are the 18 laws referred to in section 1002(12) of the CFPA. Rules prescribed by the Bureau include, for example, the rules implementing the Real Estate Settlement Procedures Act (Regulation X),¹⁴ the Truth in Lending Act (Regulation Z),¹⁵ and the Fair Debt Collection Practices Act (Regulation F).¹⁶ Orders prescribed by the Bureau include, for example, consent orders and other final orders issued by the Bureau under sections 1053 and 1055 of the CFPA.¹⁷

States’ authority to pursue violations of the CFPA is, of course, supplemental to the authority States may already have to enforce the Federal consumer financial laws. Several enumerated consumer laws authorize States to bring actions to enforce the substantive provisions of those laws. Section 1042(a)(3) of the CFPA clarifies that it does not “modify[], limit[], or supersed[e] the operation of any [such] provision of an enumerated consumer law.”¹⁸ As a result, States can enforce those laws to the full extent authorized under those laws—including against entities that are not covered persons or service providers (and thus not subject to liability under section 1036(a)(1)(A)) and including against national banks and Federal savings

¹⁴ 12 CFR pt. 1024.

¹⁵ 12 CFR pt. 1026.

¹⁶ 12 CFR pt. 1006.

¹⁷ These orders can generally be found at <https://www.consumerfinance.gov/administrative-adjudication-proceedings/administrative-adjudication-docket/>.

¹⁸ 12 U.S.C. 5552(a)(3).

associations. For example, the Fair Credit Reporting Act allows States to bring enforcement actions against any person violating that statute, including users of consumer reports that are not themselves covered persons or service providers.¹⁹ The Real Estate Settlement Procedures Act authorizes States to enforce the anti-kickback rule against those who profit from kickbacks but are not actually providing settlement services, and thus may not be covered persons.²⁰ And the Truth in Lending Act authorizes States to enforce provisions of that statute against national banks and Federal savings associations.²¹ Thus, States may bring such claims even if they could not bring similar claims against such a defendant under section 1036(a)(1)(A).

B. Limitations on States' enforcement authority under section 1042

The enforcement authority of States under section 1042 is generally not subject to certain limits applicable to the Bureau's enforcement authority.

Sections 1027 and 1029 of the CFPA set limits on the Bureau's enforcement authority. Under section 1027, the Bureau is subject to limits on its authority with respect to merchants, retailers, and other sellers of nonfinancial goods; real estate brokerage activities; retailers of manufactured or modular homes; accountants and tax preparers; attorneys engaged in the practice of law; persons regulated by a State insurance regulator; products or services that relate to specified employee benefit and compensation plans; persons regulated by a State securities commission; persons regulated by the Securities and Exchange Commission; persons regulated by the Commodity Futures Trading Commission; persons regulated by the Farm Credit Administration; and activities related to charitable contributions.²² Similarly, under section

¹⁹ 15 U.S.C. 1681s(c)(1).

²⁰ 12 U.S.C. 2607(d)(4).

²¹ 15 U.S.C. 1640(e).

²² 12 U.S.C. 5517. Each of these exclusions is subject to various exceptions as detailed in section 1027(a) through (l) and (n).

1029, the Bureau is limited in exercising authority with respect to a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.²³

With one exception discussed below, each of these limitations expressly applies to only the “Bureau” or the Bureau’s “Director.” For example, under section 1027(e), “the Bureau may not exercise any supervisory or enforcement authority with respect to an activity engaged in by an attorney as part of the practice of law under the laws of a State in which the attorney is licensed to practice law,” except as specified.²⁴ Likewise, under section 1029(a), “the Bureau may not exercise any rulemaking, supervisory, enforcement or any other authority, including any authority to order assessments, over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both,” except as specified.²⁵

Because Congress applied these limitations in sections 1027 and 1029 only to the Bureau, they do not extend to States exercising their enforcement authority under section 1042. Indeed, Congress used different language in the one exclusion that it intended to apply to States, the limitation on sellers of nonfinancial goods: “To the extent that the Bureau may not exercise authority under this subsection with respect to a merchant, retailer, or seller of nonfinancial goods or services, no action by a State attorney general or State regulator with respect to a claim made under this title may be brought under [section 1042], with respect to an activity described in any of clauses (i) through (iii) of subparagraph (A) by such merchant, retailer, or seller of

²³ 12 U.S.C. 5519. As with the section 1027 limitations, this limitation is also subject to various exceptions as detailed in section 1029.

²⁴ 12 U.S.C. 5517(e).

²⁵ 12 U.S.C. 5519(a).

nonfinancial goods or services.”²⁶ Because Congress did not similarly extend the exclusions to States in other provisions of 1027 and 1029, and instead applied them only to the Bureau, those exclusions do not extend to States.²⁷

C. States may pursue actions under section 1042 even while the Bureau is pursuing a concurrent action

State attorneys general and regulators may bring (or continue to pursue) actions under section 1042 even if the Bureau is pursuing a concurrent action against the same entity. As explained by the Third Circuit, “the clear statutory language of the Consumer [Financial] Protection Act permits concurrent [S]tate claims, for nothing in the statutory framework suggests otherwise.”²⁸

When Congress intended to preclude concurrent CFPA actions, it expressly did so. There are multiple places within the CFPA where Congress made clear that concurrent actions should not occur or that one agency should take primary enforcement role over other agencies. For example, with respect to nondepository covered persons, if the Bureau or the Federal Trade Commission (FTC) has filed an action asserting certain violations of the CFPA, the other agency is prohibited during the pendency of the action from instituting “a civil action under such provision of law against any defendant named in the complaint in such pending action for any violation alleged in the complaint.”²⁹ Likewise, Congress limited States’ ability to enforce rules relating to mortgage loan modification and foreclosure rescue services during the pendency of enforcement activity by either the Bureau or the FTC.³⁰ Finally, Congress can—and did—

²⁶ 12 U.S.C. 5517(a)(2)(E).

²⁷ See, e.g., *Russello v. United States*, 464 U.S. 16, 23 (1983) (“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”).

²⁸ *Navient Corp.*, 967 F.3d at 287.

²⁹ 12 U.S.C. 5514(c)(3).

³⁰ 12 U.S.C. 5538(b)(6).

designate the Bureau as holding primary CFPA enforcement authority among Federal regulators, limiting other agencies to the position of backup enforcement or precluding their authority to enforce entirely. Congress made that decision regarding supervised nondepository covered persons and very large banks, savings associations, and credit unions in sections 1024(c) and 1025(c), limiting the possibility of concurrent enforcement activity by the Bureau and certain Federal agencies. In short, when Congress seeks to limit concurrent statutory enforcement activity, it knows how to do so.³¹ It did not exercise that option with respect to section 1042.

V. Regulatory Matters

This is an interpretive rule issued under the Bureau’s authority to interpret the CFPA, including under section 1022(b)(1) of the CFPA, which authorizes guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial laws, such as the CFPA.³²

As an interpretive rule, this rule is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.³³ Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.³⁴ The Bureau has also determined that this interpretive rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.³⁵

³¹ See, e.g., *Russello*, 464 U.S. at 23 (“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”).

³² 12 U.S.C. 5512(b)(1).

³³ 5 U.S.C. 553(b).

³⁴ 5 U.S.C. 603(a), 604(a).

³⁵ 44 U.S.C. 3501-3521.

Pursuant to the Congressional Review Act,³⁶ the Bureau will submit a report containing this interpretive rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule’s published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a “major rule” as defined by 5 U.S.C. 804(2).

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

³⁶ 5 U.S.C. 801 *et seq.*