

# State of Enforcement:

## What's Happening Inside the CFPB and How it Impacts State Enforcement of Consumer Finance Laws

Tony Alexis and Kyle Tayman  
May 8, 2018



**GOODWIN**

# What Happened Inside Cordray's CFPB

---

- Where we were:

“There’s a new cop on the beat...”

— Former Director Richard Cordray quoted in Michael Grunwald, “Trump Wants to Dismantle Elizabeth Warren’s Agency. Good Luck With That.” (*Politico*, Dec. 3, 2017).

- Director demonstrated a healthy appetite for risk.

# What's Happening Now Inside Mulvaney's CFPB

---

- Where we are:

“[T]hat is what is going to be different... It is not appropriate for any government entity to ‘push the envelope’ when it comes to conflict with our citizens.”

— Acting Director Mick Mulvaney, Memo to Staff (Jan. 23, 2018).

# Changing the Mission Statement

---

- Before Acting Director Mulvaney
  - The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives.
- Under Mulvaney
  - The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work **by regularly identifying and addressing outdated, unnecessary, or unduly burdensome regulations**; by making rules more effective; by consistently **enforcing federal consumer financial law**; and by empowering consumers to take more control over their economic lives.

# Six Months and Atmospheric Changes

---

- Mulvaney's **BCFP**
  - Jan. 17, 2018 – requested \$0 for Q2 2018 budget.

Feb. 28, 2018 “I was shocked when I read through some of the factual allegations of some of the lawsuits we had brought at the CFPB.”

— Acting Director Mulvaney at Attorneys General Conference

- April 12, 2018 – Sparred with Senator Warren during semi-annual update.
- April 24, 2018 – CFPB no more; now the “Bureau of Consumer Financial Protection” (BCFP) as it appears in Dodd Frank.

## Asking for Industry Feedback: Potential for Change

---

- 13 RFIs/Calls for Evidence since January.
- Relaxed enforcement of enhanced HMDA data requirements.
- Delayed implementation of Prepaid Card Rule.
- Reconsideration of Payday Lending Rule.
  - And corresponding memo regarding Payday regulation and enforcement.
- Reshaping Fair Lending within the SEFL Division.
- Voluntary dismissal of payday lending suit (*CFPB v. Golden Valley Lending Inc.*).
- One (1) new public enforcement action in the first four months of 2018 under Acting Director Mulvaney – there were twenty-one (21) during the same period in 2017.

## CFPB/State Cooperation

---

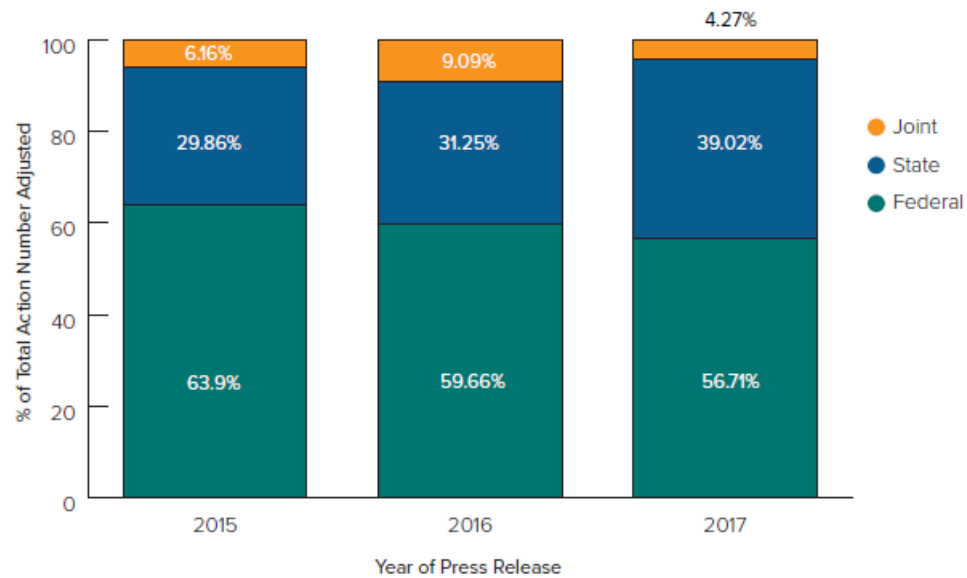
- Under prior Director, CFPB had a spirit of cooperation with the states.
  - 12 out of 201 enforcement actions.
  - Mobile Cramming Cases.
  - Significant Debt Collection Matters.
  - Significant Mortgage Matters.

“We are going to be looking to the state regulators and state attorneys general for a lot more leadership when it comes to enforcement.”

— Acting Director Mulvaney (speech at A.G. Conference Feb. 28, 2018).

# Types of State Enforcement

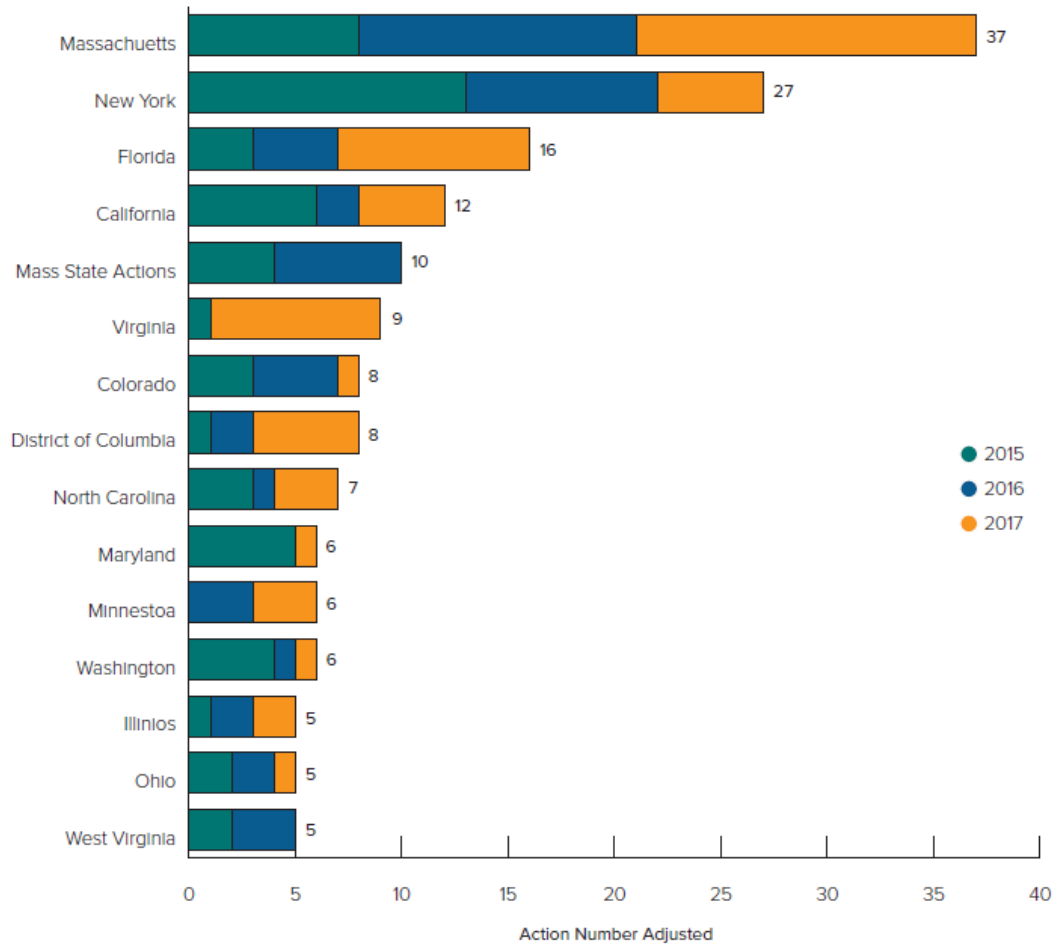
PROPORTION OF STATE-FEDERAL ACTIONS





# State Enforcement

STATE ACTIONS BY STATE



# Motivated State Actors are Looking to Fill Any Void

---

- New York

- “I am disappointed by the new administration’s sudden policy shift, which is clearly intended to undermine necessary national financial services regulation and enforcement. DFS remains committed to its mission to safeguard the financial services industry and protect New York consumers, and will continue to lead and take action to fill the increasing number of regulatory voids created by the federal government.” N.Y. DFS Superintendent Vullo (Jan. 25, 2018)

- California

- “California will carry the torch and build on Director Cordray’s good work to protect and empower consumers.” Cal. A.G. Becerra (Nov. 15, 2017)

- District of Columbia

- “We will be stepping up our efforts to safeguard consumers in other ways as well by bringing individual and multistate suits against financial services companies that harm consumers.” D.C. A.G. Karl Racine (Op. Ed. to *Law360*, April 27, 2018)

# States with Historic Enforcement Footprints

---

- Illinois
  - November 2017 \$47 million settlement with debt collectors alleged to have used false and misleading tactics; January 2017 suit against student loan servicers.
- Massachusetts
  - *Equifax* suit.
- Washington
  - March 2, 2018 A.G. request for bill protecting Washington student loan borrowers passes legislature; January 2017 suit against student loan servicers.
- New York
  - September 2017 NY DFS reaches \$12 million settlement with payday loan debt collector and servicer.

## New States on the Beat

---

- Pennsylvania
  - Josh Shapiro assumes office as A.G.; Nick Smyth (former CFPB) hired as head of Bureau of Consumer Protection.
- New Jersey
  - Division of Consumer Affairs, Office of Consumer Protection.
  - Mar. 27, 2018 announcement by A.G. Grewal: “As the federal government abandons its responsibility to protect consumers from financial fraudsters, it is more important than ever that New Jersey picks up the mantle to protect its own residents.”
  - Hired Paul Rodriguez, a de Blasio advisor.
- Virginia
  - \$2.7 million settlement with internet lender MoneyLion (Feb. 2018).
  - \$243,000 settlement with online payday lenders (Feb. 2018).
- District of Columbia
  - April 27, 2018 D.C. A.G. Karl Racine wrote an Op. Ed. in *Law360* attacking Acting Director Mulvaney’s leadership of the CFPB.

# What does this mean for consumer financial service participants?

---

- Be careful about relaxing compliance or other manners to prevent violations of the law.
- Anticipate continued examination and supervision by state and local regulatory and licensing bodies.
- Investigations and enforcement actions by state and local regulatory and enforcement bodies.
- Potentially dozens of manners to respond to investigations and supervisory activities.
- Policies and procedures in place to respond to inquiries, examinations, or potential investigations.
- Develop a plan that's appropriate for state activities.

# How can you try to stay a step or two ahead?

---

- Keep tabs on enforcement actions and trends.
  - Goodwin's Enforcement Watch (<https://www.enforcementwatch.com/>) is a great tool for this.
- Know the hot-button issues.
  - These are the areas that where even a lone consumer complaint might lead to a subpoena.
- Understand where major issues might arise in your business.
- Know what's in the state toolboxes...

# State Toolboxes

---

- Goodwin's forthcoming State Enforcement Series will cover:

**State UDAP laws.**

**Authority to enforce CFPB under Dodd-Frank (12 U.S.C. § 5552(a)).**

**Investigatory and examination authority.**

**Information Sharing with other states and federal government.**

# Thank You!

---



Tony Alexis  
[AAlexis@goodwinlaw.com](mailto:AAlexis@goodwinlaw.com)  
T: (202) 346-4032



Kyle Tayman  
[KTayman@goodwinlaw.com](mailto:KTayman@goodwinlaw.com)  
T: (202) 346-4245

- Goodwin Blogs
  - <https://www.enforcementwatch.com/>
  - <https://www.lenderlawwatch.com/>