# Director Chopra Remarks – December NAAG Meeting

DEC 07, 2021

Thank you to the National Association of Attorneys General for inviting me to address you all today. I want to thank each of you for our work together during my time as a Federal Trade Commissioner. From pharmaceuticals to privacy to Made in USA, our work together yielded real results.

In particular, the lawsuits by 48 state attorneys general and the FTC to hold Facebook accountable for its illegal buy-or-bury scheme to crush competition was a prime example of how the federal government can work side-by-side with states in true partnership to safeguard our economy from corporate abuse.

However, we know this is not always how it works.

Twenty years ago, in 2001, state attorneys general gathered in Washington, just like you are today. You and your predecessors met with a longtime top official at the Office of the Comptroller of the Currency. According to an account of the meeting in the report of the Financial Crisis Inquiry Commission, the OCC official delivered what was described as a "lecture" to you, warning that her agency would "quash" you if you persisted in attempting to safeguard consumers in your states.

Today, I'd like to talk about how federal preemption of strong state consumer protections led to disastrous consequences in the lead up to the financial crisis a decade ago. I'd also like to announce that I've directed my staff to explore ways the Bureau could make victim redress funds available to compensate victims identified in actions that state attorneys general bring to enforce federal consumer financial protection law. I also want to briefly discuss the work we must do together to stop repeat offenses by financial institutions.

### Dangers of Preemption

Government has long sought to create laws and regulations to structure and facilitate marketplaces and their effective functioning. Often state and local governments are first to see the problems.

For example, as states recognized the dangers of subprime mortgages, many began implementing their own tailored laws and protections to ensure financial institutions within their borders did not set-off a financial calamity.

While much has been written about the missteps of the Federal Reserve Board of Governors in the runup to the crisis, some agencies – spanning multiple administrations – actively sought to undermine states seeking to protect consumers. Beginning in the mid-1990s, the Office of Thrift Supervision and the Office of the Comptroller of the Currency began proposing and adopting rules that preempted state consumer protections that exceeded protections at the federal level. With the federal government imposing its authority over state law, the fuse was lit. As many banks shed their state charters to participate in the less stringent national mortgage regulatory regime, that fuse lit here in Washington would quickly find its way across the country and the race to the bottom was off.

Former Illinois Attorney General Lisa Madigan often spoke about the data. At the start of the 2007-2009 mortgage crisis, nationally chartered banks held 32% of subprime mortgage loans, over 40% of Alt-A loans, and over 50% of the pay-option and interest-only ARMs that were sold.

In a 2010 study from the University of North Carolina, researchers found that the OCC's 2004 preemption in markets directly contributed to the sub-prime mortgage crises. The UNC study confirmed that preemption allowed for an explosion of subprime mortgages in states with strong mortgage protections for consumers. Specifically, "preemption resulted in deterioration in the quality of, and increase in the default risk for, mortgages originated by OCC lenders in states with strong anti-predatory lending laws."

While the Office of Thrift Supervision is now a dead agency and Congress has reined in the ability of the OCC to attack state consumer protection enforcement, many in Washington will always be tempted to hit delete on stronger state laws that protect the public. I think this is fundamentally wrong.

## Expanding State Attorney General Authority

Fortunately, states can now directly enforce many federal consumer protection laws, including the CFPB's statute prohibiting unfair, deceptive, and abusive practices.

Rather than discouraging, obstructing, or preempting state enforcement or stronger state laws, the CFPB will be taking steps to *promote* enforcement of federal consumer financial protection law by state attorneys general. The only requirement for states to pursue these actions is to give notice to the Bureau prior to filing a complaint.

State AGs have been a valued, critical Bureau partner – collaborating on enforcement actions, consumer outreach, and on regulatory improvements. State AGs often lead the charge on their own, as the laboratories of innovation of new, creative ideas and claims. At other times, we have seen you lead as the last, if not only, line of defense in consumer protection. The Bureau must support AGs in all its consumer protection roles.

We encourage you to bring actions under the Consumer Financial Protection Act, particularly when federal protections are stronger than state statutes.

One way we hope to further enhance your enforcement tools is by clarifying the wide variety of claims that states can bring under the CFPB's statute. We want to make clear that state AGs and regulators can enforce a range of federal prohibitions and allow you to join forces.

To encourage more state enforcement of federal consumer financial protection statutes, I have directed CFPB staff to explore ways that states could be able to get more out of the remedies available under the Consumer Financial Protection Act—for example, by seeking civil penalties that the states could then use to bolster deterrence in their states. Another possibility I've asked staff to explore is how we could make the CFPB's victims relief fund, which currently has a balance of approximately $411 million, available to compensate victims identified in state enforcement actions. Currently, victim redress from the fund is only available in matters where the CFPB takes part in an enforcement action. Our goal is to quickly and efficiently distribute funds to harmed consumers and we hope to bolster your ability to get relief for your state's consumers.

To provide that expanded access, I'm considering changes to our rules, so states do not need the CFPB to join their suits in order for victims to access victim relief funds. In the interim, we are committed to reviewing expeditiously notifications from states, so we can join actions, where appropriate. This will allow states to access the funds on behalf of violated consumers.

Whether by providing resources to your offices or partnering in actions, we want to ensure your and our success in protecting consumers. We welcome your feedback and input to how we fortify your legal avenues to protect consumers.

### Reining in Repeat Offenders

One place I think we need to work together on is stopping repeat offenders, especially those that violate agency or court orders entered at the federal and state level. I am concerned that corporate recidivism has become normalized and calculated as a cost of doing business. Recidivism not only deprives consumers of protections in the marketplace, but it also saddles them with the direct and downstream costs of non-compliance. In other words, consumers end up subsidizing corporate malfeasance.

Recidivist actions point to an insidious problem within a financial institution and when it spreads, becomes a pernicious problem within a marketplace. We must forcefully address repeat lawbreakers to alter company behavior and ensure similar companies realize it is cheaper to obey the law than to break it.

The CFPB is exploring all possible remedies to address the underlying issues that drive repeat corporate offenses. This includes remedies directed at the senior management and executive levels and structural reforms to reshape behavior and incentives. Executives and managers must know that they will face repercussions for illegal acts they direct.

I believe one way we can address the underlying issues is taking a lesson learned from the subprime mortgage crisis. I stated earlier that with preemption, many thrifts and banks dropped their state charters for national charters because it allowed them to escape state oversight. We cannot allow companies to weave in and out of state and federal regulatory oversight. We need to look after one another's orders, so in CFPB investigations, we will alert state enforcers and regulators when we find their orders are being flouted.

Whatever the remedies may be, they must reflect the flagrant nature of a repeat offense as well as the bad faith in which the company has acted. Together these actions keep marketplaces even, protect consumers, and ensure companies continue to respect our supervision and enforcement authorities.

### Conclusion

To conclude, as our country is battling to recover and millions of Americans struggle to return to repayment on their mortgages and other obligations, we must remember that it is all hands on deck. Washington does not do markets any favors when it actively undermines the work of state attorneys general or seeks to preempt strong consumer protections enacted by your states. I do not want the CFPB to repeat the mistakes of failed federal agencies of the past.

Thank you.

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