The CFPB Has Retreated, But the Consumer Financial Services Protection Enforcement Ecosystem Continues to Expand; The Blue Tsunami Will Accelerate the Expansion

Author: Alan Kaplinksy

The Blue Tsunami Changes the Federal Political Landscape

The Democratic victories in both chambers of Congress are particularly significant for the consumer financial services industry.

The results represent a dramatic reversal of the political environment that existed when Republicans controlled both chambers and the White House. The Associated Press reported that Democrats won control of the House and Senate, with victories extending into states and congressional districts that Trump carried in 2024. The results have been widely characterized as a repudiation of the President and his policies.

The election will have several important consequences.

First, Democratic control of Congress will give the party control of the congressional committees responsible for overseeing the CFPB and other federal financial regulatory agencies. We can expect substantially more congressional scrutiny of the Administration's decisions to curtail CFPB enforcement, reduce its workforce, withdraw from litigation and reconsider existing regulations.

Second, the change in Senate control will have significant implications for presidential appointments. Republicans will retain control of the Senate during the lame-duck session, but Democrats will assume control when the new Congress convenes in January 2027. This will fundamentally change the prospects for confirmation of Trump's nominee, Brian Johnson, to lead the CFPB (unless Senate confirmation takes place during the remaining few days of the lame duck session) and other federal financial regulatory agencies. It will also give Democrats substantial influence over the Administration's ability to fill vacancies throughout the financial regulatory establishment.

Third, the Democratic takeover will make it considerably more difficult for the Administration to advance its legislative agenda. Although Trump retains his veto authority, Democratic control of both chambers will provide an important check on his Administration and create opportunities for investigations and oversight.

For the consumer financial services industry, these developments should not be viewed as merely political theater. They could affect the direction of federal financial regulatory policy during the final two years of the Trump Administration.

There is, however, an important distinction between the immediate consequences of the election and the longer-term consequences. The election will not immediately restore the CFPB's enforcement capabilities or reverse the Administration's actions. Nor will it automatically result in new consumer financial protection legislation. But it does signal a substantially different congressional environment, one in which the Administration's consumer financial services policies will face considerably greater scrutiny.

The election also makes the prospect of a restored and more aggressive CFPB under a future Democratic President a much more immediate consideration for the industry.

But even that development will not reverse the changes that are already taking place outside Washington.

We Saw This Coming

In March 2025, shortly after the change in presidential administrations, Ballard Spahr conducted a webinar series entitled "The Impact of the Election on the CFPB." One of the programs focused specifically on the anticipated growth of state enforcement and private civil litigation as the CFPB retreated.

We subsequently released a two-part podcast series, "Private Civil Consumer Financial Services Litigation to Partially Fill CFPB Void," featuring Ira Rheingold, Executive Director of the National Association of Consumer Advocates, and several members of our Consumer Financial Services Group.

During that discussion, Rheingold observed that state enforcement agencies and plaintiffs' class action lawyers would be carefully examining enforcement actions voluntarily dismissed by the CFPB to determine whether the complaints could be refiled in federal or state court.

Our panel also identified several areas likely to experience increased private litigation, including Fair Credit Reporting Act claims, particularly identity-theft-related claims, litigation involving artificial intelligence and discriminatory practices, and litigation involving retail banks, including claims under the Electronic Fund Transfer Act.

That prediction is now being reflected in the legal profession's educational programming. The D.C. Bar program is one example. Another is the growing number of programs offered by law firms and other professional organizations addressing opportunities for private plaintiffs' lawyers to pursue claims under federal and state consumer protection statutes.

These programs are evidence of something larger than an increase in litigation opportunities. They reflect the accelerated development of a private plaintiffs' bar that is becoming increasingly knowledgeable about consumer financial services laws and increasingly focused on identifying enforcement opportunities.

Of course, private law firms cannot simply inherit the CFPB's enforcement authority or take ownership of claims belonging exclusively to the government. They must identify viable causes of action, establish standing and satisfy applicable statutory requirements. But abandoned CFPB investigations and lawsuits can provide a roadmap for private litigation. Plaintiffs' lawyers can examine the allegations, identify potentially injured consumers and determine whether claims can be pursued under federal or state statutes, including through class actions and mass arbitrations.

State Attorneys General Are Not Waiting for Washington

The most visible part of the emerging enforcement ecosystem is the growing activity of state attorneys general. Importantly, this is not exclusively a Democratic initiative. Republican and Democratic attorneys general have demonstrated a willingness to cooperate in pursuing

consumer protection matters, often without waiting for federal regulators to join them. In some instances, however, the Federal Trade Commission has joined them.

State attorneys general are not simply substituting their own enforcement priorities for those of the CFPB. They are also stepping into matters in which the CFPB had already invested substantial investigative and litigation resources and, in some instances, attempting to ensure that previously contemplated consumer relief is not lost.

Moreover, the states are increasingly developing the institutional capacity to pursue these matters. They are hiring former CFPB personnel, expanding consumer protection staffs, retaining outside counsel, and coordinating investigations and litigation through multistate coalitions.

The practical message for businesses is unmistakable: the disappearance of a CFPB federal enforcement action does not necessarily mean the disappearance of the underlying enforcement risk.

State Legislatures Are Creating New Enforcement Tools

The expansion of state enforcement is not limited to the exercise of existing statutory authority. State legislatures are creating new consumer protection laws and strengthening the authority of existing state regulators.

New York provides an especially significant example. In February 2026, the state's Fostering Affordability and Integrity through Reasonable (FAIR) Business Practices Act became effective. The legislation substantially broadens the New York Attorney General's authority to pursue unfair, deceptive and abusive business practices. In effect, New York has given its Attorney General a more expansive consumer protection enforcement toolkit resembling the authority Congress gave the CFPB under the Consumer Financial Protection Act.

Other states are also building regulatory capacity. California has expanded the authority of its Department of Financial Protection and Innovation, which has increasingly taken on functions resembling those historically performed by the CFPB. Pennsylvania likewise has maintained a consumer financial protection unit within its Department of Banking and Securities that provides the state with a CFPB-like regulatory capability.

State legislatures are also moving into emerging areas of consumer protection, including artificial intelligence, algorithmic pricing, junk fees, automatic renewals and subscription practices. Several states have enacted restrictions on surveillance pricing, while other states are considering similar legislation.

The result is that businesses can no longer assume that the absence of a federal regulation or enforcement initiative means that a particular practice will escape regulatory scrutiny. In many instances, the states are creating their own substantive requirements, with their own enforcement mechanisms and remedies.

Even Municipal Governments Are Getting Into the Act

Perhaps the most striking example of the expanding enforcement ecosystem is what is happening in New York City.

Mayor Zohran Mamdani and Department of Consumer and Worker Protection Commissioner Samuel Levine have embarked on an ambitious effort to expand the city's consumer and worker protection laws and the means by which those laws can be enforced.

The proposed POWER Act, introduced in New York City Council on October 8, 2026, would create a municipal private right of action for consumers, workers, tenants, small businesses and nonprofits. Rather than relying exclusively on DCWP to pursue alleged violations, qualifying private parties and organizations would have a direct avenue to seek judicial relief.

The legislation is particularly noteworthy because it would extend private enforcement into areas such as alleged deceptive, unfair, abusive and unlawful, trade practices, unconscionable loan terms and other conduct affecting consumers and small businesses. If enacted, it could materially expand the universe of potential plaintiffs and defendants under New York City's consumer protection laws.

New York City is also moving aggressively into artificial intelligence regulation. On October 20, DCWP proposed rules governing automated customer service systems, including AI-powered chatbots and traditional automated telephone systems. The proposal would require disclosure when consumers are interacting with automated systems, provide meaningful access to human representatives and prohibit businesses from evading responsibility for unlawful conduct merely because technology was used.

The proposal is particularly interesting because it is not limited to AI-generated misinformation or discrimination. It would treat certain failures to provide meaningful customer service as deceptive or unconscionable trade practices.

These initiatives demonstrate that consumer protection enforcement is no longer exclusively a federal or even a state-level undertaking. Municipal governments are developing their own substantive requirements, enforcement programs and potential private enforcement mechanisms.

A Restored CFPB Will Not Reverse These Developments

There is an important long-term consequence of these developments that deserves particular attention.

The Blue Tsunami makes it reasonable to anticipate that the CFPB will eventually regain much of its former stature. When a Democrat is elected President, I expect that administration to seek to restore the CFPB as a powerful federal consumer financial protection agency, with substantial enforcement, supervisory and regulatory capabilities.

But restoring the CFPB will not reverse what is happening at the state and local levels or eliminate the private plaintiffs' bar that is developing in response to the federal retreat.

Consider what will have happened by then:

- State attorneys general will have accumulated much more experience pursuing consumer financial services cases without CFPB participation, including cases originally investigated or brought by the CFPB.
- State regulatory agencies will have hired former CFPB personnel, expanded their staffs and developed expertise in areas previously dominated by federal regulators.

- State legislatures will have enacted new consumer protection statutes and expanded existing enforcement authority creating a patchwork quilt of federal and state laws.
- Municipal governments will have developed their own consumer protection initiatives, potentially including private rights of action and new administrative enforcement mechanisms.
- Private plaintiffs' firms will have invested in consumer financial services practices, developed expertise in federal and state consumer protection laws, and identified new opportunities for class actions and other private litigation.
- Bar associations and other professional organizations will have educated lawyers about these developments and helped build the professional infrastructure necessary to sustain this activity.

None of these developments is likely to be reversed simply because the CFPB once again becomes an aggressive federal regulator.

Indeed, the restoration of a powerful CFPB could produce an even more complicated enforcement environment. Businesses could find themselves facing federal investigations and enforcement actions while simultaneously defending state attorney general investigations, municipal enforcement proceedings and private class actions involving substantially similar conduct.

Nor will all of these enforcers necessarily share the same priorities or interpretations of applicable law. Even when they pursue the same underlying conduct, they may employ different statutes, legal theories, remedies and procedural mechanisms.

The New Compliance Reality

The irony is that an administration seeking to reduce federal regulation and enforcement may ultimately produce a consumer financial services regulatory and enforcement environment that is more expansive and more difficult to navigate than the one that existed before.

The Blue Tsunami may accelerate the restoration of federal consumer protection enforcement, but it will not undo the decentralized enforcement infrastructure that has emerged during the CFPB's retreat.

We are moving toward an ecosystem consisting of a powerful federal regulator, 50 state regulatory and enforcement systems, increasingly active municipal governments, and a sophisticated private plaintiffs' bar. Each will have its own statutory authority, enforcement priorities and litigation strategies.

For financial institutions and other businesses providing consumer financial products and services, the practical consequences are substantial. Compliance can no longer be viewed primarily through the lens of federal statutes, CFPB regulations and federal supervisory expectations. Companies must increasingly evaluate their practices against a growing body of state and local laws, anticipate enforcement by multiple governmental authorities, and account for private litigation that may arise from the same underlying conduct.

The D.C. Bar's decision to offer a program addressing private law firms' pursuit of cases abandoned by the CFPB is therefore more than another CLE offering. It is a small but telling illustration of a much larger transformation.

The CFPB may be retreating, but the consumer protection enforcement ecosystem is expanding. The Blue Tsunami may change the timetable for the CFPB's restoration. It will not eliminate the new ecosystem.

The ultimate result may be a consumer financial services enforcement environment that is larger, more sophisticated, more decentralized and more challenging for the industry to navigate than ever before.