



National Association
of Attorneys General

2011 PRESIDENTIAL INITIATIVE WRAP UP

AMERICA'S FINANCIAL RECOVERY:

Protecting Consumers as We Rebuild

*Prepared by the Presidential Initiative Working Group
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Introduction

When he began his term as President of the National Association of Attorneys General, Attorney General Roy Cooper decided to focus his year-long initiative on ensuring that consumer protection would not be overlooked in the rebuilding of the U.S. economy.

On April 11th and 12th, 2011, General Cooper hosted a conference in Charlotte that brought together over 200 participants, including Attorneys General, Federal regulators, industry, consumer advocates, academicians, and other interested persons. The purpose of the conference was to gather information about how everyone, working together, can strengthen the economy while protecting consumers. Conference participants heard from panels that focused on the three goals of the Presidential Initiative: (1) how Attorneys General can prevent financial scams (2) examining the changed landscape of consumer protection after the passage of the Dodd-Frank Act (“Dodd-Frank” or “Act”) and (3) identifying the causes of the financial crisis, with an eye toward preventing future economic calamities. Videos and other materials from the conference can be found at <http://www.ncdoj.gov>.

PREVENTING FINANCIAL SCAMS AND FRAUD THAT PREY ON ECONOMIC DISTRESS

The first goal of Attorney General Cooper’s Presidential Initiative was to identify scams prevalent during times of economic downturn and develop and share education and enforcement strategies to crack down on frauds and scams that sink people further into debt.

Types of Scams

Economic strain can cause an effect like falling dominos: job or salary loss can lead to default on debt, which can lead to plunging credit scores, which can lead to increased cost of accessing credit, and so on. People in desperate financial situations can be more susceptible to promises of unconventional work opportunities or ways to reduce debt short of payment in full. It is no surprise, then, that when the national and global economy is in recession, scammers preying on these situations can flourish. Attorneys General’s offices across the country have found that the following kinds of scams and fraud are most prevalent during times of economic downturn:

- **Business opportunities.** These scams solicit large upfront payments, promise easy money and offer only vague information about the company or its products. Some examples of these opportunities require consumers to buy worthless software to set up on-line stores or lists for envelop stuffing or medical payment processing.
- **Debt settlement companies.** Some unscrupulous debt settlement companies say they can negotiate with lenders so you can pay pennies on the dollar and get out of debt in a matter of months. But frequently, these outfits charge excessive upfront fees before paying off any bills, and can make matters worse for the consumer when the lenders receive no payments for months toward reducing the debt.
- **Lotteries.** These scammers provide promises of a windfall, be it winning a lottery or a chance

to get a grant because of a new government program, which can be hard to resist when you are down on your luck.

- **Credit repair scams.** Financial distress can cause an individual's credit score to plummet, making credit unavailable or more expensive. Some companies claim they can raise credit scores for an up-front fee and don't do anything that the individual couldn't do on their own.
- **Foreclosure rescue firms.** These firms target people that are in default on their mortgage, asking for an up-front payment and advising the homeowner to cease all communication with their lender. People that fall victim to these firms end up paying thousands of dollars and end up unable to save their home.

Given their historical experience on these issues and physical proximity to consumers, Attorneys General are well positioned to lead efforts to prevent abuse and enforce the law. Attorneys General can be on the front lines in combating financial fraud by developing consumer education campaigns, advocating for legislative and policy reforms and vigorously pursuing enforcement actions.

Developing Consumer Education Campaigns

While Attorneys General don't hesitate to bring scammers into court to stop them from victimizing more consumers, it is more preferable for these scammers to disappear for lack of business. Through educational efforts, Attorneys General can assist in raising awareness about these scams to help people from falling for them in the first place. As new methods of communication are becoming available, Attorneys General should be thinking about the ways that different kinds of consumers can be most effectively reached. As is most often the case, it may be that utilizing a multitude of approaches is the best way to assure consumers are informed.

Traditional methods of communication, such as press releases, news alerts, and face-to-face interaction remain effective. For example, a well produced video remains one of the most effective educational tools. Many seniors are online but there are still large numbers who respond better to a video or a face-to-face meeting. The Elder Fraud Prevent Re-victimization project in the North Carolina Department of Justice is one example of how working closely with seniors, utilizing peer volunteers, can result in measurable savings. This program worked with 447 seniors who had lost \$1,292,507. Con artist frequently target seniors who they perceive to be susceptible, even sharing list of those who have been scammed previously. The support network created by this project, which includes peer volunteers and cooperation from wire transfer companies, successfully protected nearly all seniors from becoming repeat victims of scammers who were pressuring these victims to hand over an additional \$1,228,718.

There are many community organizations that Attorneys General can partner with in order to increase the numbers of consumers reached. Collaborative educational projects such as the AARP Telephone Town Hall—where thousands of seniors are connected on a phone call to hear about the latest fraud and scams—have been very successful.

In addition to these traditional methods of communication, new technology could allow Attorneys General to reach consumers where they are, perhaps reaching consumers more often or those that have previously been difficult to reach. Though computers still account for 50% of all internet search traffic, smartphones and tablets are rapidly increasing technologies that allow individuals to essentially carry a computer with them everywhere they go. Many Federal and State government agencies are discovering that

Mobile Applications (Apps) provide another opportunity for government to be responsive to the public. In the context of consumer protection, the possibilities are limitless. An app currently under development in the North Carolina Attorney General's office will allow consumers to send in complaints rich with digital data such as photographs, audio recordings, and GPS locations. When complaints are received, an instant, topic-specific response will be sent back to the user. On the back end, the office will be able to utilize open-source platforms like Ushahidi and Swift River to map those complaints to have very specific targeted prevention campaigns.

Advocating for Legislative and Policy Reforms

Attorneys General are a powerful voice for necessary policy reforms to meet changing times. Not only does such focus protect citizens, but also can create a level and certain playing field for small businesses and large employers. In recent years, several Attorneys General have examined lending practices and advocated for significant consumer safeguards on payday lending and consumer finance loans. North Carolina, for example, has been able to outlaw payday lending within its borders.

Attorneys General have also sought safeguards for our military personnel. Often inexperienced with finances, or under stress because of their military responsibilities, our service force is one group too often targeted by unscrupulous con-artists. Literally or figuratively lined-up outside our military bases, these folks prey upon those keeping us safe with costly loan offers, rent-to-own schemes, or worthless product warranties.

Enforcing the Law

Attorneys General have long held a crucial role as the top consumer protection agent in their state. Whether investigating a driveway paver tricking seniors out of thousands of dollars for a shoddy load of cement, getting a temporary restraining order against a roofer falsely claiming hail damage across a wide region, or extracting consumer restitution from those engaged in mortgage fraud, legal action is often required to stop unfair and deceptive practices.

Attorneys General can utilize their unique powers as the states' top cops to investigate concerns, impose injunctive orders that require compliance with the law, or extract fines and penalties for those trying to skirt it. In the age of the internet and borderless crimes, information sharing and multi-state enforcement of the various state laws allowed Attorneys General to have nationwide impact while at the same time protecting the individuals in their own states.

A related trend is the increasing cooperation between state and federal authorities. Avoiding future economic calamity will require continued communication and coordination between the states and the U.S. Department of Justice, Federal Trade Commission, federal banking regulators and others. Nowhere was recognition of this trend more apparent than with the passage of the Dodd-Frank Act and its creation of the Consumer Financial Protection Bureau. The Act recognizes the essential role that State Attorneys General play as a front-line defense to financial fraud and as a uniquely positioned force to identify acts and practices that contribute to the destabilization of our economy.

CHANGED LANDSCAPE OF CONSUMER PROTECTION AFTER DODD-FRANK

In July of 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (“the Act”) was signed into law by President Barack Obama.¹ At more than 2,000 pages, the law makes broad changes to the financial system in the United States. An important part of the legislation is the creation of a new regulatory agency, the Consumer Financial Protection Bureau (“CFPB”), which will oversee financial products introduced into the marketplace. The law also addresses derivatives regulation, the failure of non-depository institutions, proprietary trading, rating agencies and mortgage origination standards.

The Presidential Initiative Conference featured several speakers that focused on the state of consumer protection after the crisis. Two panels offered advice to the CFPB and Attorneys General about how to work together to protect consumers and how to use new data available as a result of Dodd-Frank, one panel focused on the provisions of Dodd-Frank that changed the standards for evaluating whether state laws are preempted by Federal law, and another panel put Attorneys General and other stakeholders on alert for additional issues for consideration. Conference key note speakers—Brian Moynihan and Elizabeth Warren—provided their unique perspectives about the ways to grow the economy and ensure that consumers are treated fairly in the marketplace.

Brian Moynihan, President and CEO of Bank of America (“BOFA”), began his remarks by expressing his support for the creation of the CFPB. He pledged the assistance and attention of the company in helping people get back to work and in creating a better financial system that will produce more stability and sustainable growth in the future. Moynihan gave reasons for optimism in the performance of the economy: long-term unemployment is falling for the first time; household debt ratio has fallen; the U.S. GDP is growing and economists project that it will continue to grow.

As a result of the crisis, BOFA recognizes that consumers have changed needs. Consumers want (1) value that they can see and understand, (2) clarity, choice, and control in their financial services, and (3) a healthy sense of financial wealth and well-being. BOFA has responded by introducing new products, like low-cost, web-only checking accounts and no-frills, low-cost credit cards. The company was also the first to end overdraft fees and has not raised credit card rates in response to the Credit Card Act. Finally, in 2009 BOFA announced a “clarity commitment” to provide mortgage customers with more transparency about the product they purchase.

Moynihan acknowledged that the mortgage crisis is the most difficult situation the bank has faced. In the past few years, BOFA alone has completed 840,000 of the 4 million mortgage modifications made nationally. Over 30,000 customer service professionals have been hired for this effort and BOFA has tried to come up with creative ways to reach consumers, including hosting community fairs and opening regional assistance centers.

Looking ahead, Moynihan cautioned that America's population growth is contracting, which will impact both the need for housing and appreciation in housing prices. As greater down payments are required of consumers to make home loans, it may take longer for them to save up the money to buy a home. BOFA will continue to work hard in thinking about these problems and will do what is best for the company and America.

¹ Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010) [hereinafter referred to as “Dodd-Frank Act”]

Elizabeth Warren, Assistant to the President and Special Advisor to the Secretary of the Treasury, has played a significant role in advocating for the creation of the CFPB and then working to stand the agency up. She began her remarks to the conference by summing up the mission of the CFPB: to make consumer financial markets work for American families. To accomplish this mission, the CFPB is taking a two-pronged approach: (1) to increase transparency in financial products so that consumers can appreciate and costs and risk up front and to streamline regulations to put industry on a level playing field, and (2) to enforce the law. Lack of enforcement of laws, the absence of regulation on certain financial institutions, and a breakdown in the relationship between State and Federal regulators, that all contributed to the financial crisis.

It is around issues of enforcement that the CFPB and the Attorneys General have an “incredible opportunity for collaboration,” according to Warren. A successful partnership between the agencies will have a profound impact on consumer financial markets by more effectively deterring unscrupulous lenders, protecting consumers, and ensuring greater compliance among lenders. Ways in which the CFPB may be able to help AGs include CFPB’s research capacity and prioritization of enforcement matters. However, Warren acknowledged that CFPB and Attorneys General may not always see eye-to-eye on all the issues that may come up. However, she pledged that agency leadership understand that Attorneys’ General role as “the people’s lawyer” and that open exchange of ideas will only help the CFPB’s success and knowledge.

Building a relationship between CFPB and State AGs

As part of the Presidential Initiative, General Cooper convened a working group made up of the Attorneys General from—in addition to North Carolina—Indiana, Iowa, Illinois, and Washington, in addition to North Carolina, to provide the CFPB leadership with a sounding board as to state concerns and opinions as they began to stand up the new agency. The working group has been in constant contact with CFPB leadership, with a particular focus on two issues: dual jurisdiction in enforcing Federal consumer financial protection laws, and data sharing. At the conference in April, the working group and CFPB announced agreement on joint principles concerning both of these issues, which will serve as a starting point to agreeing on more specific protocol and policies.² At the conference, participants also heard from a number of experts about how to best address these issues for the benefit of agencies, industry, and consumers.

Co-equal Jurisdiction

The Dodd-Frank Act preserves the crucial role that State Attorneys General have in protecting consumers from financial fraud and abuse not only by preserving state laws that are more stringent, but also by authorizing Attorneys General to enforce Federal consumer financial protection laws and regulations. The Act provides that the “attorney general . . . of any State 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 that has jurisdiction over the defendant, to enforce provisions under this title or regulations issued under this title, and to secure remedies under provisions of this title or remedies otherwise provided under other

² Statement attached as addendum to this summary.

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law.”³ This language suggests that Attorneys General will be able to step into the shoes of the Bureau in enforcing Federal consumer financial protection law. This authority is limited as to nationally-chartered financial institutions and federal savings associations. As to those entities, State Attorneys General can only enforce regulations promulgated by the Bureau under a provision of Title X of the Act, not the provisions of the Act itself.⁴

While this concurrent jurisdiction with the Bureau will result in stronger enforcement capabilities, it also has the potential to create confusion and duplication of effort for agencies as well as industry. As part of this Presidential Initiative, General Cooper solicited ideas and input for how best this relationship can work not only for the regulators, but for industry and ultimately consumers.

One of the panels at the Conference focused specifically on this issue. Panelists Commissioner Julie Brill, Andy Pincus, and Larry Thompson gave their opinions and recommendations to ensure that regulators, industry and consumers all benefit through this dual enforcement jurisdiction.

According to Commissioner Julie Brill⁵, successful coordination can be achieved through mutual respect for the unique roles, authorities, and expertise of each agency involved. Commissioner Brill gave examples of ways that state and Federal regulators can cooperatively work together:

1. **Co-plaintiffs**—State AGs and Federal regulators divide the investigatory work and file an enforcement action as co-litigators. A recent example of this is in the *Your Money Access* litigation.
2. **Co-investigators but separate actions**—In investigation and negotiation phases, each agency capitalizes on unique areas of expertise and authority. A recent example is in the *Life Lock* case.
3. Target the same company but focus on different activities, such as in the 2008 *Countrywide* cases.
4. **Sweeps**—multiple agencies bring cases at the same time and make a joint announcement so that the public and industry knows that agencies are looking at them. The FTC and Attorneys General have collaborated on sweeps in the past, focusing on work-from-home and business opportunity scams.

Drawing on her experience at the Federal and State enforcement agencies, Commissioner Brill made several recommendations to ensure successful coordination in light of Dodd-Frank dual jurisdiction:

1. **Continuously share information.** Agencies need to share information about what is happening to consumers and how agencies are thinking about approaching actors.
2. **Be flexible in approaching cases.** Flexibility is important because each case presents unique issues that need to be dealt with by enforcers. Given the importance of financial regulation and protection of consumers, Congress felt it was important in Dodd-Frank not to provide a lot of specificity, but instead to provide for flexibility for the different agencies as well as redundancy to

³ Dodd-Frank Act § 1042 (a).

⁴ *Id.* § 1042 (a)(2).

⁵ Julie Brill is currently a Commissioner with the Federal Trade Commission. She previously worked in the Vermont and North Carolina Attorney General Offices.

ensure that regulatory gaps will not cause another financial crisis.

3. **When determining best approach to coordinated enforcement, State and Federal regulators should consider the following questions:**

- What legal authority does each enforcer bring to each issue in question?
- What is the expertise of each agency?
- What are the available resources of each group?
- What is the geographic location of the issue in question?
- Does the problem require rapid relief? If so, who is best suited for this?
- What is the structure of the industry (few players dominating the industry, many players within the industry, few actors representing the root of the problem in an industry)?
- Are we investigating the root of the problem or the tips of a problem?

Andrew Pincus⁶ expressed concerns on behalf of industry that the authority be exercised in a consistent manner across regulators. He noted that legitimate businesses hate fraud because it takes away customers and makes consumers hesitant to engage in the market place. However, legitimate businesses have some real concern about Dodd-Frank. The concerns of businesses include how the authority will be coordinated, and what institutions will be included within the Bureau's reach.

Pincus made the following recommendations to assuage concerns of industry in ensuring a healthy marketplace and ease of compliance:

1. Avoid determining on a case-by-case basis which agency will regulate companies. There is value in businesses knowing which entity is regulating them because this provides certainty to businesses and a place to go to find answers to their regulation questions.
2. Promote consistent interpretation of law and regulations as much as possible. Consistent interpretation of law among regulators allows businesses to establish processes to ensure compliance; in contrast, inconsistent interpretation among regulators leads to great uncertainty. Perhaps there should be some kind of process to "vet" interpretations of a statute among regulators prior to bringing an enforcement action.
3. Create process to ensure intrastate consistency of interpretation of law. Because many enforcement agents will likely regulate within a state, it is important that the regulations are consistent throughout the state to avoid ambiguity in compliance.
4. Establish process to allow businesses to gain approval of certain practices. It benefits businesses to be able to gain approval for products or services and to know that those products or services won't later be the target of an enforcement action by a different regulator.
5. Consider the effect of enforcement actions on credit availability to small businesses. Typically the type of credit available to small businesses and consumers are the same. Dodd-Frank provides that the Bureau must consider the effect on small businesses of regulations; a similar consideration should be made prior to enforcement decisions.
6. Those vested with enforcement authority should have public interest in mind. There may be different motivations for individuals working on a private versus public payroll. The broad reach

⁶ Andrew Pincus is a Partner in the Washington, D.C. office of Mayer Brown.

and the remedial possibilities of this act create a need to enforce regulations with the public interest in mind.

7. Seek input from businesses on the practical effect of different enforcement approaches. Businesses fear inadvertent effects of regulation that goes beyond the intended regulation.

A third panelist, Larry Thompson,⁷ told the conference that private companies want to be responsive to a broad range of stakeholders and to comply with the law. To the extent that these companies are not in compliance with the law, it generally is because either there were mistakes in operation of the business or the law was so complex that the company thought it was doing the right thing, but regulators had a different opinion.

Thompson recommended:

1. Agencies need to communicate with companies to ensure that companies may be in compliance with regulations.
2. State Attorneys General should use private counsel sparingly to enforce this Act. Use by Attorneys General of private bar to enforce Federal law can lead to conflict in priorities. Attorneys General should avoid using private bar attorneys.

Data Sharing and Usage

The Dodd-Frank Act contemplates much greater collection of financial information from industry and consumers. Though sharing data between agencies can present logistical and philosophical questions, in general greater sharing will benefit industry in not having to answer multiple requests for information. It can also present an incredible opportunity for Attorneys General and other regulators to make smart use of the data, with an eye toward prevent fraud from taking place.

Panelists at the April Conference shared their ideas for how this great amount of new information could be best utilized by Attorneys General and CFPB to target wrong doers but also create educational efforts to prevent consumers from being victimized in the first place.

Janneke Ratcliffe⁸ said that that the impact of data collection can be magnified if it is shared with independent, not-for-profit researchers. Ratcliffe noted that due at least in part to the financial downturn, a remarkable amount of new data and information will be available to State and Federal regulators. The following provisions of Dodd-Frank detail new information to be gathered:

- **Title X §1013 Consumer Complaint Database**—A database must be maintained that identifies the type of complain, the location of the consumer, the service provider, and the description of the product. This data must then be shared among federal and state agencies and be given in an annual report to Congress.
- **§1033 Consumer Rights to Access Information**

⁷ At the time of the conference, Larry Thompson was the Senior Vice President, Government Affairs, General Counsel and Secretary of Pepsico. Thompson has since taken a position as law professor at the University of Georgia.

⁸ Janneke Ratcliffe is the Executive Director of the Center for Community Capital at the University of North Carolina, Chapel Hill.

- **§1071 Deposit Account Data to CFPB**—This includes a census tract of customer, the location of ATMs and branches, the number of accounts, and the money deposited.
- **§1072 Small Business Data**—Small business data must be given to the CFPB, who should make the information public if it does not violate privacy interests.
- **§1094 Changes to HMDA**—Described in more detail below.
- **Title XIV Defaults and Foreclosures Database**—The CFPB and HUD must gather information from mortgage lenders and servicers regarding defaults and foreclosures.

Within the provisions specific to HMDA, the following additional information will now be collected:

- **Borrower and Property Information**—HMDA now requires reporting the age, credit score, and loan to value (LTV) of the borrower.
- **Loan Terms and Conditions**—The points and fees of the loan, spread on all loans, prepay penalty terms, introductory rate terms, non-standard amortization, and loan term must be reported.
- **New Data Fields to Allow Better Tracking**—New information required for better tracking is required such as channel, originator number, universal loan id, parcel number, and such other information as may be required.

Federal agencies are also undertaking their own initiatives to collect and analyze data:

- **OCC/OTC**—Loan servicing and modifications database
- **Treasury/HAMP**—Collecting loan-level, property level, and borrower data on MHA/HAMP. Loan-level data on modifications and NPV model was publicly released.
- **SEC-Reg AB/ASF**—Loan-level reporting of origination, performance, and servicing information for private mortgage backed securities.
- **National Mortgage Database**—Freddie Mac is sampling mortgage borrowers and providing identification and tracking using a combination of credit repository data and surveys.
- **CSBS/AARMR**—To automate compliance exams via review of up to 100% of loans quarterly, including loan-level, pricing information, GFE information, HUD-1 elements, loan terms, underwriting information, and HMDA LAR fields.
- **Federal Housing Financial Agency Housing Enterprise Data**

While this increase of information provides a lot of opportunity for focused prevention and targeted enforcement, there are a number of reasons that the full potential power of the information may not be reached if regulators alone hold access to the data. This is due to a number of factors, including

- **Potential shifts in regulatory priorities**
- **Regulators operating within their own silos**
- **Capacity limitations**—Agencies may have limited resources due to the increase in financial complaints and budget cuts in the regulatory agencies.
- **More Narrow Focus/Approach to Data**—Regulatory agencies do and should have a narrow

focus on data depending on their jurisdiction. However, independent researchers have the freedom and flexibility to view the data from a more holistic perspective.

- **Regulate the Regulators**—With access to broader data, independent researchers will be able to regulate the regulators

To maximize the potential of this information, Radcliffe recommended the following:

1. **Where possible, regulators and policymakers should partner with independent researchers to analyze the data.** There are several examples of successful partnerships between regulators and independent researchers working together to provide accurate, thorough analysis of data to inform policy decisions. Two such projects in which the Center for Community Capital has been involved is the State Mortgage Foreclosure Prevention Working Group and the State Attorneys General Program's Report on the Impact of Anti-Predatory Lending Laws and Federal Preemption on Foreclosures.
2. **The Federal Reserve Board should amend the regulations to require additional data to be reported under the Home Mortgage Disclosure Act (HMDA).** The following kinds of information would be helpful to regulators and researchers if collected:
 - Information on loan price
 - Whether the loan was a manufactured home loan
 - Loan-to-value ratio
 - Borrower debt to income ratio

According to panelist Ira Goldstein,⁹ Attorneys General are in an advantageous position to collect and effectively utilize the information data that will now be collected and centralized under Dodd-Frank. This is due to the fact that Attorneys General are closer to the problem than are federal officials; have greater authority and responsibility for enforcing consumer protection under Dodd-Frank; can dedicate more resources to fighting the problems rather than sorting through jurisdictional questions as they had in the past; greater access to more information, including that which is their own (or within related) agencies; and can utilize non-legal staff such as paralegals, interns, and others.

Goldstein said that there are many sources of information, public and private, from which Attorneys General can collect data in order to begin spotting trends:

- HMDA—Attorneys General will certainly gain access to more HMDA data than was the case before Dodd-Frank, though until further rulemaking it is not clear how much more.
- Local Recorder of Deeds/Clerk of Court
- Local foreclosure data provider/Realty Trac, though these sources can be very uneven as to accuracy and completeness of data
- State Banking Regulators—Good resource for where the problems are and the nature of the problems
- Financial regulatory agencies (e.g., CFPB)

⁹ Ira Goldstein is the Director of Policy Solutions at The Reinvestment Fund.

- Census Bureau (identify area racial/ethnic composition and other social, demographic and economic characteristics)
- HUD's Neighborhood Watch, approved appraisal list: compiled by local appraisers and mortgage agencies
- Internet (e.g., Mortgage Lender Implode-O-Meter): Provides the history of what companies went bad and when this occurred
- Referrals from local organizations (e.g., consumer credit/housing counselors, agencies enforcing state or local civil rights laws)—Allows seeing problems before they emerge
- Community Reinvestment Act Evaluations

Goldstein recommended steps that can be taken by Attorneys General to utilize this information to target victims or future victims of fraud:

1. Gather data on properties in financial distress / facing foreclosure
2. Map those properties
3. Obtain HMDA data
4. Gather data on property history for properties in area
5. Search complaints in target areas within the given AG's inventory
6. Using data and complaints, identify problematic actors
7. Calculate mortgage "death rates" for problematic lenders – percent of loans made in each year that subsequently went to foreclosure or pre-foreclosure – overall and in target markets
8. Reach out directly or through intermediaries to households
9. Pursue targeted investigation and potentially enforcement action

Charles Harwood,¹⁰ encouraged Attorneys General and CFPB to learn from the FTC's experience in collecting and utilizing complaints and other information. The FTC utilizes Sentinel. This system has a number of functionalities:

- **Compiling consumer complaints**—Contains nearly 6 million complaints from consumers from a number of sources.
- **Retrieving filed complaints**—The FTC allows 1,700 agencies to have access to the complaint data.
- **Analyzing complaints**—The system provides alerts if another person is searching the same information, top violator reports, and scheduled searches that notifies searchers of new complaints.
- **Sharing Data**—Sharing data allows access to complaints across areas that can be beneficial to many agencies.

¹⁰ Charles Harwood is the Deputy Director of the Bureau of Consumer Protection at the Federal Trade Commission.

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Harwood recommends that the Attorneys General and CFPB consider the following questions when implementing a new data collection system:

- Who is the information being shared with?
- What will the information be used for?
- What privacy or other representations were made when the data was collected?
 - » This can be critically important to avoid privacy issues.
- Does the data contain information that is subject to heightened protection standards or laws?
 - » Personally identifiable information? Sensitive health information? Confidential business information? Trade secrets?
- What protections will the recipient observe? Will the information be exposed to hacking or other inadvertent activities?

Preemption

Though there are differing views on its impact, there is no doubt that Dodd-Frank Act made significant changes to the analysis of whether state consumer protection laws are enforceable against nationally-chartered banks and in what circumstances State Attorneys General can enforce state laws against financial institutions.

Amy Friend¹¹ has observed the development of preemption around banking and financial activity in positions as a financial regulator, as Congressional staff, and in private industry. She provided Conference participants with an overview of this evolution and how Dodd-Frank may change the preemption standard going forward.

Congress created the CFPB upon concluding that the current federal regime was not working in protecting consumers, as evidence of the proliferation of unsuitable and abusive mortgages at the heart of the housing and financial crisis. Congress faulted a number of agencies for the financial collapse, including the Federal Reserve, for failing to write rules under HOPA that could have prevented abuses; bank regulators that failed to recognize consumer protection as part of the check on the safety and soundness of these financial institutions. In addition, Congress recognized the absence of regulatory oversight for non-bank financial actors not subject to the same type of supervisory regime as banks.

As a result to these perceived failings, Congress stripped the Federal Reserve Board of their rule making authority, took away exam and enforcement authority from the federal banking agencies with respect to consumer protection and created a new regime for bank type supervision for other industries in financial areas and gave authority in all of these areas to the newly-created CFPB.

In recognition of the regime being a large job for one agency, Congress gave Attorneys General the ability to enforce the Consumer Protection Act, as well as the regulations issued by the CFPB. This is a departure from other consumer protection statutes which largely give regulatory control to the federal agencies. In addition, the Act specifically states that its provisions serve as a floor for protections, as opposed to a ceiling. This allows states to create and enforce laws that give more protection to consumers as

11 Amy Friend is currently a Managing Director at the Promontory. Previously she served as Chief Counsel of the Senate Committee on Banking, Housing, and Urban Affairs and as Assistant Chief Counsel for the Comptroller of the Currency.

long as these laws are not inconsistent with Federal laws.

In summary form, the provisions dealing with preemption in Dodd-Frank do the following:

- **Changes the process by which OCC reviews a state law to determine whether it is preempted.** Determinations now must be made on case by case basis with respect to individual states by regulation or order.¹²
- **Evidence impacting the preemption determination must be stated on the record.** Determinations by the OCC must be based on substantial evidence made on the record.¹³
- **OCC Decision not afforded high level of deference.** Courts reviewing the OCC's determinations will no longer be according Chevron deference, which gives the agencies the most latitude in terms of their rule making. Instead courts use Skidmore deference in assessing the thoroughness of the agencies considerations, validity of the agency's reasoning, consistency with other valid determinations, and other factors the court finds persuasive.
- **Determinations must be periodically reviewed.** The OCC must conduct a review of all their preemption determinations every five years and decide whether to continue to preempt or rescind the decision. The review, after public notice and comment, must be reported to Congress.¹⁴
- **Determinations must be published.** The OCC must publish, at least quarterly, a list of their preemption determinations.¹⁵
- **National Bank Act preemption is no longer extended to bank subsidiaries and agents.** This is a significant role back of the OCC's regulation and overturns *Wachovia v. Waters*.¹⁶
- **No field exception.** Dodd-Frank expressly states that neither the National Bank Act nor the Home Owners Loan Act provide field preemption; federal thrifts are therefore subject to the same preemption standards as national banks.¹⁷
- **Supreme Court decision in *Cuomo* is codified.** Dodd-Frank codifies the Supreme Court holding in *Cuomo v. Clearing House Association* by permitting state Attorneys General to bring enforcement action against national banks with respect to applicable state laws or those laws that have not been preempted.¹⁸

As Dodd-Frank moved through Congress, the preemption provisions changed more than once. In the original proposal, nationally-chartered banks had to comply with state laws unless those state laws were discriminatory or inconsistent with federal laws. The House changed the standard by stating that state laws are preempted when they have a discriminatory effect, the state law would significantly interfere with the

12 See Dodd-Frank Act § 1044(b)(3). However the OCC may determine, in consultation with the CFPB, that another state's law that is substantively equivalent is also preempted. See *Id.* at § 1044(b)(3)(B).

13 See *id.* at § 1044(c).

14 See *id.* at § 1044(d).

15 See *id.* at 1044(g).

16 See *id.* at § 1045.

17 See *id.* at § 1044 (b)(4).

18 See *id.* at § 1047(a).

ability of the national bank to engage in the business of banking, or if preempted by another federal law. This standard caused much debate and delayed consideration of the Act. The House then amended the standard, bringing it closer to the OCC's regulation by adding "materially impairs the ability to conduct business" in addition to the "prevents or significantly interferes" standard.

Rather than citing specific standards, the Senate bill refers to the Barnett standard of "prevents or significantly interferes" in preempting state consumer financial laws. This undid the broader standards adopted by the OCC in 2004. The compromise adopted in the conference bill was to adopt the Barnett holding and also added that state law will be prevented "if the state prevents or significantly interferes with the exercise by the national bank of its powers."

Preemption expert Arthur Wilmarth¹⁹ argued that Dodd-Frank presents a significant roll back of the OCC's preemption authority and an even greater roll back of authority with regard to thrifts. This is demonstrated in the following changes made in Dodd-Frank:

- **"Prevent or significantly interfere" standard**—In 2004, the OCC specifically declined to adopt this standard because it restricts their authority by requiring a substantial impediment. The OCC has found that a modest or trivial interference would be enough, while the new standard requires a significant interference. However, while the Act was in conference, Congress made clear that they preferred a return to the more demanding standard of *Barnett*.
- **Case by Case Determination Standard**—The OCC must consult with CFBB before spreading preemption determinations to other state laws. This is a complete turnaround from existing OCC rules, in which the OCC has asserted its authority to make blanket determinations as to what kinds of state laws are preempted. In its 2004 rule making the OCC said it was consciously taking a more generic approach, which is completely unsupportable after Dodd-Frank.
- **Deference**—The denial of Chevron deference is probably the most significant provision of Dodd-Frank. Historically the OCC continually claimed that if a statute was ambiguous they could fill the gap. However, Cuomo found that the OCC must show delegated authority for preemption. Based on Cuomo the OCC does not have the delegated authority to stop states from using their sovereign law enforcement powers to enforce a non-preemptive state law. The court then took away Chevron deference and replaced it with Skidmore deference, which requires agencies to persuade the court that the state prevents or significantly interferes. This places the burden of proof on the agency, rather than the state.
- **Incorporation of *Cuomo* and overruling of *Waters***—This in particular can be viewed as are huge victories for the states:
 - The *Cuomo* decision was a 5-4 holding; since that decision, a shift in the Court caused uncertainty about what standard would continue to apply.

19 Arthur Wilmarth is a Professor at the George Washington University School of Law.

- After the financial crisis there was a shift from the *Waters* decision to the *Cuomo* decision. The *Waters* decision essentially meant that Federal regulatory agencies were the sole regulatory authority over a broad range of financial institutions. As demonstrated by the financial crisis, the federal government did not always demonstrate the kind of control necessary to keep these institutions in check. That lack of control was a significant cause of the financial crisis.

Open questions still to be determined include how state laws of general applicability will be affected by this new standard; specifically, laws such as fraud, tort, and contract.

Former New Mexico Attorney General Hal Stratton²⁰ observed that the authorities and preemption standards under Dodd-Frank may be treated similar to the same issues under the Consumer Products Safety Commission (CPSC). The CPSC's rule was that when a regulation was passed regarding a specific product, it was preemptive as to the risk it addressed. It did not matter whether the state regulation was more or less strict. Where there was no Congressional or CPSC regulation enacted, the states could regulate in any way they wanted. The 2008 Consumer Product Safety Improvement Act gave state Attorneys General significant power over products, by enforcement of CPSC orders.

Stratton also noted that the definition of "consumer financial protection law" will be very important, as it is only state laws that meet this definition that will be subject to the preemption standards contained in Dodd-Frank.

Additional Issues to Consider under the Dodd-Frank Act

"Unfair" and "Abusive" Practices Outlawed by Dodd-Frank

Tom Ryan²¹ addressed some of the open questions about the prohibition on "unfair" and "abusive" practices in Dodd-Frank.

The Unfairness Doctrine

Under section 1031(c) of the Act, the Bureau is given broad authority to prevent abusive practices. Specifically, the Bureau may declare an act or practice "unfair" if:

- It causes or is likely to cause substantial injury to consumers,
- It cannot reasonably be avoided
- The injury is not outweighed by countervailing benefits to consumers or to competition

20 Hal Stratton is the former Attorney General of New Mexico and currently Senior counsel with Brownstein, Hyatt, Farber and Schreck.

21 Tom Ryan is Senior Counsel with American Express.

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Section 1031(c)(2) gives the Bureau the authority to consider public policy in making this determination:

- The Bureau may consider established public policies in determining whether a practice is unfair
- However, public policy may not provide the primary basis for finding a practice unfair. Note: this mirrors FTC Act Section 45(n), which limits the ability of the FTC from making an unfairness distinction based solely on public policy

“Deceptive” acts under Dodd-Frank

Many expect that the Bureau will also adopt the FTC's “deceptive” act definition under Section 1031. The *FTC Policy Statement on Deception* (“Deception Policy Statement”) defines the elements of deceptive acts or practices as:

- Misrepresentation, omission or practice that is likely to mislead consumers
- The representation, omission, or practice must be purposeful when
- Viewed from the perspective of a consumer acting reasonably under the circumstances

Deception has primarily been used in the advertising, but may be used more broadly to reach other arenas of consumer abuse.

The New “Abusive” Standard and the Board’s Broad Authority

“Abusive” is a new term, and is described in 1031(d). The Abuse Standard reflects the Dodd-Frank Act's efforts to increase financial literacy by assigning accountability based on a lack of understanding. The Standard shows a common interest in making risks associated with particular products as transparent as possible. However, it remains to be seen how much guidance the Bureau will provide on whether assessments of “abuse” will be determined at the point of loan origination, throughout the life cycle, or at the time of default.

The Bureau can declare an act “abusive” under 1031(d) if it:

1. Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service
2. Takes unreasonable advantage of consumers':
 - Lack of understanding of the material risks, costs, or conditions of a product or service;
 - Inability to protect their interests in selecting or using a financial product or service; or
 - Reasonable reliance on a covered person to act in the interests of the consumer

The Standard raises a number of questions, including who assess the consumers' “ability to understand” a term or condition? And what does it mean to “materially interfere” with a consumers' ability to understand a product's risks or costs?

Affect of the Abuse Standard on Industry

The Bureau's ability to use the Abuse Standard has the potential to elevate industry responsibility to consumers. There is also concern that the Bureau will have plenary power under the Standard which will result in a chilling effect on the production of new products and services. However, there seem to be a number of safeguards in the Dodd-Frank Act which seek to prevent overbroad usage of the term:

1. **Elevated Responsibility to Consumers:** Banks do not have a fiduciary responsibility to consumers; however, the Abuse Standard does elevate their responsibility to consumers by using the reasonable standard to determine consumers' ability to understand products and services, and whether the covered person has "taken advantage" of consumers.
2. **Procedural Safeguards:** The Dodd-Frank Act makes some effort to prevent the Board from overbroad usage of the term "abusive." These safeguards include:
 - Prior to proposing a rule and during the comment period, Sections 1031(e) and 1022(b)(2)(B) and (C) require the Bureau to consult with other Federal banking agencies, or other Federal agencies, as appropriate and also must consider the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.
 - Section 1022(b)(2) describes the Act's rulemaking standards, and require that the Bureau consider potential benefits and costs to consumers and covered persons; potential reduction of access to consumer credit financial products and services (Note: this prong is most heavily weighted as it speaks to the Act's goal of improving the availability of credit); and potential impacts to covered persons.

"Substantial Assistance" under Section 1036(a)(3)

A person will be deemed to violate Section 1031 if they knowingly or recklessly provide substantial assistance to another person in violating Section 1031 or any rule prescribed under 1031. The Bureau has direct authority over covered persons and service providers; however, it remains unclear as to whether this Section will grant the Bureau additional authority over other entities that are not expressly covered by the Act.

Credit Rating Agencies and Consumer Access to Credit

According to Professor Robert Jackson,²² an important consumer protection challenge that Attorneys General will encounter over the coming years is consumer access to credit. Nationwide financial recovery and consumers' ability to participate in the marketplace depend heavily on this access. Credit markets currently possess many of the same characteristics as the mortgage lending arena did prior to the financial crisis in 2008, which should raise a red flag to Attorneys General and regulators. These characteristics include (1) nationwide trends and lagging credit score recovery; (2) state-specific challenges; and (3) inadequate Federal regulatory oversight.

22 Robert Jackson is a Professor at Columbia Law School.

Nationwide trends and lagging credit score recovery

The extent to which consumer behavior drives the recovery will depend on consumer credit scores. Lagging score recovery thus creates a challenge for federal and state government and a potential area for abuse.

The average consumer faces a number of uphill battles with consumer rating agencies:

- Consumer lending has remained stagnant, while commercial banks have accrued positive returns on their balances
- Surveys demonstrate that American citizens have on average paid down their credit card debt, yet their average credit scores have actually fallen
- Many Americans (1/10) experienced their first negative credit scores during the 2008 financial crisis. The slow return of the economy and consumers' inability to engage in the marketplace are interdependent, and mean that it will take even longer for consumers' scores to recover

Three credit bureaus currently determine consumer credit reports, including: Experian, Equifax, and TransUnion. Some evidence suggests that these agencies were used by predatory lenders to identify susceptible consumers prior to the financial crisis. Credit agencies have a history of making mistakes, and have demonstrated an inability to adequately regulate themselves. "Credit repair" firms have also been reported to take advantage of consumers, and existing laws prohibiting such abuses have been inadequately enforced.

State-Specific Challenges

Credit scores and credit score practices vary geographically, making it difficult to determine the underlying forces that affect different consumers' access to credit. Federal authorities lack sufficient data on state level dynamics that lead to credit problems, and Attorneys General are uniquely suited to help close this gap. Research shows that credit markets vary significantly depending on their geography. For example, Missouri and California have witnessed the average credit scores of consumers fall by more than 10 points, and many of the lowest average credit scores are held by states in the South.

Current Federal Regulation is Inadequate

Current law regulating credit markets is currently limited to the following:

- **Fair Credit Reporting Act**—Requires that agencies disclose negative credit events to consumers and provide procedures for dispute
- **Section 1100(F) of the Frank Dodd Act**—Requires disclosure by users of credit scores of the factors that adversely affected credit scores
- Federal Reserve last year issued an *online guide* to consumers explaining the use of credit reports and scores
- Potential for future participation by the Bureau?

Role for State Attorneys General

The Attorneys General are in a unique position to synthesize state-level data on consumer credit scores and access to credit and provide federal regulators with the initial tools necessary to investigate potential sources of consumer abuse.

Auto Lending

Kathleen Keest²³ focused her presentation on the provisions of Dodd-Frank dealing with automobile lending. As the states and Federal government have passed legislation to better regulate harmful lending practices in the mortgage and small-dollar loan areas, another emerging lending issue to consider is auto lending. Some of the harmful practices include:

- **Dealer interest rate markups.** Consumers are rarely aware that once lenders determine initial interest rates that are appropriate for each consumer, dealers have the ability to raise interest rates. This practice invokes issues of fairness, as well as the potential for abuse in cases where discretionary pricing operates on a discriminatory basis. These markups make it difficult for consumers to assess cost, and have numerous market effects, including increased risk of delinquency and severity of loss for consumers and lenders, as well as loss of competitiveness among direct lenders.²⁴
- **Yo-Yo Deals.** Consumer abuse can occur where dealers complete an immediate sale under financing terms that are attractive to the consumer, but later require the customer to change the finance agreement to a less favorable one under the guise of being unable to receive approval from the lender.
- **Drive One, Pay for Two Schemes.** In this scenario, dealers appear to provide consumers a new product for the value of their trade-in vehicle, though the true costs of the new vehicle are hidden in financing agreements.

The FTC has had some success in regulating the auto lending industry by stopping unfair and deceptive trade practices. However, the FTC's enormous scope of jurisdiction and finite resources has limited the FTC's ability to deeply regulate this area.

However, this has changed by the passage of Dodd-Frank. The Act gives the CFPB some authority to oversee auto lending. In general, the CFPB will have regulatory authority over auto dealers who make and keep their own loans, while the FTC will regulate dealers who operate as indirect lenders by selling vehicles and providing financial products from third party lenders. This division of power is important as the FTC's powers under UDAP are not limited to lending, but can also address used car rules and other areas of abuse in the auto industry.

It is likely that the rules under the FTC and the Bureau will mirror each other such that all dealers

23 Kathleen Keest is Senior Policy Counsel with the Center for Responsible Lending.

24 The Center for Responsible Lending recently found that consumers paid over \$1 billion in securitized markups in 2009, translating into an average of \$800 per used car transaction

operate under the same rules but are overseen by separate authorities. Details regarding cooperative arrangements between the FTC and the Bureau, including jurisdiction regarding hybrid lenders will be determined as the agencies move forward.

Understanding this bifurcation of authority over auto lending will be important to understand what authority Attorneys General will have in this area. Dodd-Frank gives Attorneys General explicit authority under rules promulgated by the Bureau. In addition, there is an argument that Attorneys General have the right to enforce FTC UDAP rules as to lenders under the Bureau's jurisdiction.

LOOKING BACK/LOOKING FORWARD: HOW TO PREVENT THE NEXT ECONOMIC DOWNTURN

Barry Ritholtz²⁵ addressed the conference on how the financial crisis developed and how State Attorneys General can act to prevent another crisis. Ritholtz described changes in individuals' financial behavior that, combined with a lack of diligence by mortgage lenders and major banking institutions, set the stage for immense turbulence in housing and credit markets. Homeowners, who were squeezed by flattening wages, extracted equity from their homes at record rates – an average of as much of ten percent of household income in 2004 and 2005, compared to average rates of less than one percent in the 1990's. At the same time, with investors in a "mad scramble" for higher yields because of the low Federal Funds rate set under Federal Reserve Chairman Alan Greenspan, lenders "got a little creative."

As a consequence, mortgages began to take on a different character. This materialized not only in risky interest-only and teaser-rate mortgage loans, but in some cases outright fraud. But Ritholtz took exception to the notion that borrowers should bear the brunt of the blame for mortgage fraud. "The bank is the one with the fiduciary obligation," he said. "They basically gave that up." Borrowers who could make roughly three mortgage payments – a far cry from a previous standard requiring an estimated ten years of payments – met bank approval and would meet the requirements for a warranty of fitness under new, relaxed lending standards. "The typical toaster had the same warranty as a thirty-year mortgage," he said. The resulting foreclosures and a massive stock of new, but unoccupied homes, will take years to reverse, he said.

Ritholtz outlined steps that State Attorneys General can take to prevent another crisis from occurring, including:

1. Creating a panel to examine possible areas for investigation, composed of "non-political" outside experts.
2. Aggressive investigation of illegalities, including extensive review of bank fraud, bad actors and financial shortcuts. Attorneys General should exercise their subpoena power, which the congressionally-chartered Financial Crisis Inquiry Commission was unable to do.
3. Creating a joint clearinghouse among attorneys general regarding bank fraud.
4. Active cooperation with Federal prosecutors.
5. Educating the public on bank fraud and establishing that fraud does not pay.

²⁵ Barry Ritholtz is the CEO and Director of Equity Research at Fusion IQ, and the author of *Bailout Nation: How Greed and Easy Money Corrupted Wall Street and Shook the World Economy*.

Thomas Hoenig,²⁶ argued forcefully against the current model of large banking institutions, which are often referred to as “too big to fail.” Large banking institutions have continued to receive “special protection,” including access to the Federal Reserve’s discount window and access to deposit insurance from the federal government, incongruent with their expanded business models. That has left taxpayers continually liable for the large banks’ potential failure despite their broadened risk-taking.

According to Hoenig, the problem can be traced in large part to the passage of the 1999 Gramm-Leach-Bliley Act, which allowed different types of institutions, such as commercial banks and investment banks, to consolidate. The effect of this statute was to allow very special commercial banks to broaden the risk profiles that they could take on. Diminishing leverage ratios, which measure banks’ capital adequacy, illustrates how the landscape has changed. As the ratios have declined, risk increases. The risk is quite significant given the amount of resources and assets under the control of these financial institutions.

To further exacerbate the problem, these large institutions essentially operated under a guarantee from the federal government that they would be saved in the event of a crisis, giving these institutions a significant financial advantage over smaller, perhaps more risk-adverse institutions. Though Dodd-Frank contains provisions to enhance supervision over the states, it may not have as strong an effect as originally thought.

To effectively deal with the problem, Hoenig proposes limiting the function of commercial banks to the activities for which they were originally given special protection, which he argues would give capital standards more meaning and would allow the institutions to be more effectively resolved in the event of a failure. Additional reforms he suggests include revisiting the portions of the Glass-Steagall Act that were repealed in the Gramm-Leach-Bliley to more narrowly authorize the activities in which depository institutions can engage.

Mark Zandi²⁷ of Moody’s Analytics traces the cause of the financial crisis to a number of regulatory failures. The first was a lack of regulation on loan origination – with federal regulations on high-risk “Alt-A” and subprime loans coming only in late 2006 and early 2007, when those loans were at their height. Further, no federal government or private entity looked at the mortgage origination process itself in its totality. A third regulatory failure was the lack of a clear resolution process for troubled financial institutions. By treating financial institutions differently each time it was confronted with a potential failure, regulators contributed to confusion and instability.

According to Zandi, we can be optimistic about the effect of the post-crisis regulatory overhaul. New capital requirements, stress-testing, stiffer derivatives rules, the Financial Stability Oversight Council (which examines system-wide risk) and an improved resolution process, all major innovations of the Dodd-Frank Act, will be helpful to both to prevent future crises and to ensure that any crises that do occur will be less severe than the current crisis.

Rather than doing away with “too big to fail” institutions, Zandi argues that policymakers should look to compensate taxpayers for the “subsidy” provided to the banks by implicit government backing and increase transparency so the public is aware of what is on the banks’ balance sheets. As financial institutions across the globe are increasing in size and complexity, over-regulation could harm the competitiveness of U.S. banks.

26 Thomas Hoenig is President of the Federal Reserve Bank of Kansas City.

27 Mark Zandi is Chief Economist for Moody’s Analytics.

On the final panel of the conference, Professor Michael Barr²⁸ and Peter Wallison²⁹ presented their differing views on the causes of the financial crisis. According to Barr, it was a “perfect storm” of problems that caused the financial crisis, including failure of regulators to properly oversee and enforce laws regulating financial institutions. In contrast, Wallison, who served on the Financial Crisis Inquiry Panel, argued that it was policy and legislative decisions made previously—the decision to make more loans available to moderate and low-income borrowers through Freddie Mac and Fannie Mae; enactment of the Community Reinvestment Act; and HUD’s Best Practice Initiative, which led to weakened underwriting standards.

Charlotte Observer reporter Rick Rothacker³⁰ provided a look at the reasons for Charlotte’s growth as a banking capital and the effects the crisis has had on the city. He noted the favorable laws and visionary banking leaders that competed with one another but ultimately created a crucial sector in the North Carolina economy.

CONCLUSION

Over the course of his Presidential Initiative term, Attorney General Cooper has brought focus and attention to the role that State Attorneys General have played and will continue to play to promoting an active, healthy economy while protecting consumers and businesses that want to play by the rules. The working group will continue its work communicating with CFPB leadership about the consumer financial protection issues most relevant to State Attorneys General and creating protocol and procedures to coordinate enforcement actions, as well as other interested stakeholders.

28 Michael Barr is a Professor at the University of Michigan School of Law.

29 Peter Wallison is the Arthur F. Burns Fellow in Financial Policy Studies at the American Enterprise Institute.

30 Rick Rothacker is a reporter for the *Charlotte Observer* and is the author of *Banktown: the Rise and Struggles of Charlotte's Big Banks*.

Addendum

JOINT STATEMENT OF

Principles on Consumer Financial Protection

BY THE

Consumer Financial Protection Bureau

AND THE

**Presidential Initiative Working Group of the
National Association of Attorneys General**

The Consumer Financial Protection Bureau and the Presidential Initiative Working Group of the National Association of Attorneys General hereby adopt this Joint Statement of Principles on Consumer Financial Protection, as agreed between them. The purpose of this Joint Statement is to establish and enhance a lasting and productive partnership between the Consumer Bureau and the State Attorneys General, as contemplated by the Consumer Financial Protection Act of 2010, Pub. L. No. 111-203, tit. X. These principles have been developed to advance the following goals shared by the parties: (1) protecting consumers of financial products or services from unlawful acts or practices; (2) providing clear rules that improve the marketplace for consumers and remove unfair competition for the benefit of law-abiding businesses; and (3) finding ways to promote understanding and address concerns raised by consumers about financial products or services as efficiently and effectively as possible.

Principles of Enforcement Cooperation

Under the Consumer Financial Protection Act of 2010, the Consumer Bureau and the State Attorneys General are granted authority to enforce the provisions of the Consumer Financial Protection Act of 2010, and regulations issued thereunder, with certain exceptions, in order to secure the remedies provided by law. This new authority augments the existing authority afforded to State Attorneys General to enforce legal protections for consumers in a wide variety of markets, including those for consumer financial products or services. Therefore, the parties will seek to work together, where appropriate and to the greatest possible extent, to:

- Develop joint training programs and share information about developments in Federal consumer financial law and State consumer protection laws that apply to consumer financial products or services;
- Share information, data, and analysis about conduct and practices in the markets for consumer financial products or services to inform enforcement policies and priorities;
- Engage in regular consultation to identify mutual enforcement priorities that will ensure effective and consistent enforcement of the laws that protect consumers of financial products or services;

- Support each other, to the fullest extent permitted by law as warranted by the circumstances, in the enforcement of the laws that protect consumers of financial products or services, including by joint or coordinated investigations of wrongdoing and coordinated enforcement actions;
- Pursue legal remedies to foster transparency, competition, and fairness in the markets for consumer financial products or services across state lines and without regard to corporate forms or charter choice for those providers who compete directly with one another in the same markets; and
- Develop a consistent and enduring framework to share investigatory information and to coordinate enforcement activities to the extent practicable and consistent with governing law.

Principles of Complaint Cooperation

Under the Consumer Financial Protection Act of 2010, one of the primary functions of the Consumer Bureau is to collect, investigate, and respond to complaints raised about consumer financial products or services. The Act contemplates that, to the extent practicable and consistent with governing law, the Consumer Bureau and the State Attorneys General will share such information to guide and inform their law enforcement efforts. Therefore, the parties will work together to develop protocols, processes, and procedures that govern how they may most efficiently and effectively:

- Share, refer, and route complaints and consumer complaint information between the Consumer Bureau and the State Attorneys General;
- Analyze and leverage the input they receive from consumers and the public in order to advance their mutual goal of protecting consumers of financial products or services; and
- Create and support technologies to enable data sharing and procedures that will support complaint cooperation.

CONCLUSION

Therefore, the parties adopt this Joint Statement of Principles in the spirit of state-federal partnership for the purposes stated above.



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