



Gaps in State UDAP Laws, Attorney General Authority, Will Hinder CFPA Effectiveness

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Compromises on the proposed Consumer Financial Protection Agency (CFPA) might restrict its enforcement powers and enforcement by state attorneys general, even as to state-regulated industries. Lawmakers might be assuming that CFPA rules can be enforced indirectly through state laws against unfair and deceptive acts and practices (UDAP). *However, a National Consumer Law Center study¹ last year found that, in almost all states, significant gaps or weaknesses limit state UDAP protections.*

Almost half the states exempt all or a substantial portion of creditors from the ban on unfair or deceptive practices or have significant ambiguities in coverage:

Alabama	Illinois	Michigan	Oklahoma	Texas	Washington
Alaska	Louisiana	Nebraska	Rhode Island	Utah	West Virginia
Arkansas	New Hampshire	Ohio	Tennessee	Virginia	Wisconsin
Florida					

Many other states lack a broad prohibition on unfair or deceptive practices or impose other serious hurdles that will prevent state attorneys general (AGs) from consistently enforcing CFPA rules:

Arizona	Delaware	Minnesota	North Dakota	South Dakota	Wyoming
Colorado	Indiana	Nevada	Oregon	Virginia	

Some states permit AG enforcement but do not give injured consumers full ability to enforce the statute:

Iowa	Mississippi	New York	Texas
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In all, two-thirds of the states have serious flaws in their UDAP statutes that will hinder enforcement of UDAP rules. Nearly every other state has some hurdle weakening full enforcement of rules against unfair or deceptive practices.² These include exemptions for licensed mortgage brokers, uneven coverage of post-sale practices (servicing, collections), and limits on injunctive authority.

¹ Carolyn Carter, National Consumer Law Center, "Consumer Protection in the States: A 50-State Report on Unfair and Deceptive Acts and Practices Statutes" (Feb. 2009), available at http://www.nclc.org/issues/udap/content/UDAP_Report_Feb09.pdf.

²For an appendix summarizing each state's law, see <http://www.nclc.org/issues/udap/content/50-statesummariesFeb09.pdf>.