

## What To Expect From Increased FTC-State AG Collaboration

*By Michelle L. Rogers, Antonio Reynolds and Katherine Halliday*

Law360 (March 8, 2019, 11:42 AM EST) --

In prepared remarks at the winter meeting of the National Association of Attorneys General on March 5, 2019, Federal Trade Commission Chairman Joseph Simons advocated for increased collaboration with state attorneys general and noted that such collaboration is critical to the FTC's mission.

His pitch to the NAAG could turn out to be a useful signal of increased joint FTC-AG enforcement activity in the future.

### **The FTC's Road Map for State AG Collaboration**

Simons touted several recent collaborative efforts with the AGs to illustrate his vision for future efforts. In "Operation Main Street," the FTC partnered with eight state AGs, the U.S. Postal Service, two U.S. attorneys' offices and the Better Business Bureau to bring more than 20 actions against scammers targeting small businesses.

Beyond enforcement, the FTC and various AGs have hosted joint events across the country, including webinars on the most prevalent scams affecting specific states and regional "Common Grounds" conferences that provide a forum for the FTC and AGs to meet with other state and federal consumer protection offices, attorneys, and consumer advocates to discuss emerging trends and consumer challenges.

Simons urged the AGs to take full advantage of the FTC's Consumer Sentinel, its nonpublic, secure online database of consumer complaints available only to state and federal law enforcement. The FTC considers Sentinel the best resource for states to identify enforcement priorities because it includes more than 16 million complaints that can be sorted by state to pinpoint the most prevalent scams and consumer concerns.



Michelle Rogers



Antonio Reynolds



Katherine Halliday

The FTC also wants the states to contribute to Sentinel; so far, 23 states are already sharing their consumer complaints and two more have made commitments to do so. The FTC's goal is 100 percent participation.

### **Increased FTC-State AG Collaboration Has Important Compliance Implications**

Simons said the FTC and state AGs can combine their legal authority and substantive expertise to expand their enforcement capabilities. In the simplest terms, cooperation will likely mean more enforcement matters — some that are labeled as joint efforts, and others as independent investigations that nonetheless result from coordination behind the scenes.

Either could increase the stakes for companies that are the targets of cooperative efforts. Indeed, even for matters starting as a single-party investigation, enhanced collaboration may lead states or the FTC to bring in others to expand the investigation's reach. In most instances, the consequences of a single-state investigation or settlement will be smaller from a monetary, reputational and operational perspective than the consequences of an investigation that covers multiple or all states.

The FTC and state AGs have more to offer each other than pure manpower. While there is overlap in their jurisdictional authority, they enforce different laws and can pursue different remedies. Within their states, AGs typically have a broad mandate to enforce state-level consumer protection laws against any businesses operating within their jurisdiction, including their own state-level UDAP (unfair or deceptive acts or practices) laws.

In addition, AGs can, in certain circumstances, enforce federal laws. For example, Dodd-Frank specifically grants state AGs the authority to bring a civil action to enforce certain provisions of the act, including its UDAAP (unfair, deceptive, or abusive acts or practices) prohibition. Indeed, several states have already relied on this provision to bring suits against financial services providers. Many other federal consumer financial laws also expressly grant state AGs enforcement authority.

The FTC has enforcement authority under the Federal Trade Commission Act and other federal consumer protection statutes, including the Fair Credit Reporting Act, Fair Debt Collection Practices Act, and Telemarketing Sale Rule but does not have authority under Dodd-Frank, as that authority is vested generally at the federal level with the Consumer Financial Protection Bureau and the prudential banking regulators.

Despite its geographical breadth, the FTC's reach is more limited in other respects. For example, pursuant to Section 5 of the FTC Act, it can enforce UDAPs but has no authority to enforce "abusive" acts or practices. Working together, the FTC and the states can combine legal mandates to investigate and police a broader range of conduct.

The FTC and state AGs have also developed substantive expertise in different industries and business practices. This allows the groups to take advantage of areas where one has strength and the other does not. The FTC, for example, has developed expertise in the areas of data security, privacy and the growing fintech sector.

The AGs, however, may be more attuned to consumer concerns in their respective states and regarding the business practices of companies or industries doing business there. Many states, including Pennsylvania, New Jersey and Maryland, have created divisions within their AG offices devoted to consumer financial protection issues — state, or mini, CFPBs, as some refer to them.

While the expectation of increased FTC-AG collaboration increases the stakes of enforcement matters and highlights the importance of a strong compliance program, it does not materially change best practices for companies looking to steer clear of their scrutiny. As before, companies should be proactive in developing a strong, cooperative relationship with the AG offices in the states where they are headquartered or have substantial business operations or customer bases.

In addition, they should continue to monitor activities of interest in their industry and state, as well as the FTC. As always, a strong compliance management system that includes consumer complaint analysis is paramount. Companies should also make use of the aggregated complaint data that the FTC releases from the Sentinel database, now available on a quarterly basis. The FTC's priorities are dictated in part by consumer complaint data and complaint trends may play a key role in setting the agenda for FTC and AG collaboration.

---

[Michelle L. Rogers](#) and [Antonio Reynolds](#) are partners and [Katherine Halliday](#) is counsel at [Buckley LLP](#).

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*