

LOCAL CONSUMER FINANCIAL PROTECTION INITIATIVE

Creating a Strategic Implementation Plan



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Section 1: Planning Grant Journey Map



Goals

- Enable local government to examine a new approach to improving financial stability for residents that aligns with and complements existing efforts
- Engage key local stakeholders in the strategic planning process to increase political buy-in for implementation
- Develop a comprehensive and actionable plan focused on building lasting consumer protection infrastructure

Setting Up the Engagement	Forming the Planning Advisory Group	Strategic Plan Information Gathering and Stakeholder Engagement	Synthesizing Information and Selecting Priorities	Drafting the Strategic Plan	Release and Implementation
<p>Steps</p> <ul style="list-style-type: none"> <input type="checkbox"/> Finalize and sign MOU <input type="checkbox"/> Finalize internal planning team members <input type="checkbox"/> Set up CFE technical assistance call schedule <input type="checkbox"/> Participate in the Virtual Kickoff meeting <p>Decisions</p> <ul style="list-style-type: none"> <input type="checkbox"/> Who will be the day-to-day project lead and point of contact? <input type="checkbox"/> Who from your senior leadership needs to be regularly updated? 	<p>Steps</p> <ul style="list-style-type: none"> <input type="checkbox"/> Use the Advisory Group Guide to identify and select members <input type="checkbox"/> Organize first meeting to introduce planning grant goals, including COVID-19 consumer awareness strategy <p>Decisions</p> <ul style="list-style-type: none"> <input type="checkbox"/> How will you engage stakeholders throughout the process? <input type="checkbox"/> How will you structure the Advisory Group? Will there be subcommittees? 	<p>Steps</p> <ul style="list-style-type: none"> <input type="checkbox"/> Plan Site Visit meetings with CFE Fund staff <input type="checkbox"/> Attend Consumer Protection 101 webinar <input type="checkbox"/> Utilize section 5 of the workbook to organize your information gathering process <input type="checkbox"/> Review legal research memo <p>Decisions</p> <ul style="list-style-type: none"> <input type="checkbox"/> How will you engage the Advisory Group to provide additional insight? <input type="checkbox"/> Are there other stakeholders to engage? 	<p>Steps</p> <ul style="list-style-type: none"> <input type="checkbox"/> Work with senior leadership to review the overall scope of services and select areas of focus <p>Decisions</p> <ul style="list-style-type: none"> <input type="checkbox"/> What additional information or resources are needed to make decisions on priorities? <input type="checkbox"/> Who from senior leadership needs to be involved in the decision making? 	<p>Steps</p> <ul style="list-style-type: none"> <input type="checkbox"/> Work with CFE Fund staff to draft the strategic plan <input type="checkbox"/> Engage relevant stakeholders to provide feedback <input type="checkbox"/> Work with senior leadership to finalize plan <p>Decisions</p> <ul style="list-style-type: none"> <input type="checkbox"/> Who will review the drafts? <input type="checkbox"/> Who will approve the final plan? 	<p>Steps</p> <ul style="list-style-type: none"> <input type="checkbox"/> Work with CFE Fund and your leadership to develop a public release for your strategic plan <input type="checkbox"/> Announce the launch of your consumer protection strategy <p>Decisions</p> <ul style="list-style-type: none"> <input type="checkbox"/> Will you engage Advisory Group members in the release process? <input type="checkbox"/> What will be the format of the release? <input type="checkbox"/> What are first action items for implementation?
September	October	October – February 2022	February – March	March – May	June

Section 2: Forming a CFPI Planning Advisory Group

Goals

An Advisory Group is an important vehicle to increase the scope, awareness, and effectiveness of the Consumer Financial Protection Initiative. While the group's primary function is to provide you with the support needed to implement your eventual strategy, the group has four early over-arching goals:

- Identify critical local consumer financial protection issues;
- Establish a foundation of information upon which issue framing and early policy recommendations can rely;
- Identify and evaluate existing infrastructure to leverage and/or barriers to improve for intake, tracking, and enforcement of consumer protection issues; and
- Support development and implementation of the consumer protection initiative strategic plan.

Ultimately, it will be this Advisory Group that champions your plan and motivates others, both internally and externally, to ensure the implementation. These over-arching goals provide the foundation-setting targets to help you evaluate who are the right people to serve on the Advisory Group.

Identifying the Right Advisory Group

The Advisory Group should convene internal stakeholders, such as key city/county government decision makers, and external stakeholders, like state government departments, Legal Aid, and other critical nonprofit organizations that will help develop the CFPI plan and support implementation. These stakeholders can also later serve as champions for policy/program support, promotion, and even sponsoring new consumer protection ideas down the road. The right members can serve as trusted and influential voices in the implementation phase, and can control the levers that can make the implementation plan a success.

Potential Advisory Group members may include key governmental decisionmakers, like a Chief of Staff, or state agency heads with consumer protection jurisdiction. Complete section 5B of this workbook, *Identifying Important Stakeholders for Local Consumer Protection*. Stakeholders identified in section 5B *could* be potential members of the Advisory Group. It may also be helpful to think about potential Advisory Group members through the lens of an “influence map” to see the connections to other critical decision and policymakers.

These interactive tools and examples can help to visualize potential connections:

- Google Sheets Table (link to be shared during training)
 - A template to help identify and categorize broader stakeholder support.
- Mind Meister – [MindMeister.com](https://www.mindmeister.com)
 - A mapping tool that can help chart ‘lines of influence’ to key stakeholders

Coordinating the Advisory Group

You should structure the Advisory Group with a clear expectation of the number of meetings and level of commitment needed for planning the Office of Consumer Protection, and how it will be implemented. During the planning process, Advisory Group members may provide or pledge some type of support during the implementation. The group should anticipate meeting at least 6 times, and, generally, you could think about the life cycle of the Advisory Group like this:

Step One: Introductory/kick off meeting to establish goals

This initial meeting provides an introduction for Advisory Group members and sets the stage for this planning process. To contextualize the planning process, you can describe the Local Consumer Financial Protection Initiative; explain initial consumer financial protection education; provide examples of local government complaint intake/tracking enforcement; and highlight how other jurisdictions provide referrals or coordination with regional and state partners.

This meeting also provides you the opportunity to demonstrate the administrations dedication and commitment to the need for local consumer protection.

Step Two: Identifying resources for implementation

The second phase is landscaping the consumer protection environment. This phase may take multiple meetings, or coordinating a smaller group, to identify all potential resources. Ultimately, your Advisory Group will help identify the gaps in education, complaint intake, and enforcement. In the process, they should also help to identify the right issues, the existing enforcement tools, and the right set of enforcement partners for those issues.

List potential issues below and the enforcement mechanisms you're aware of; additionally, provide some ideas for additional/creative enforcement tools.

Step Three: Office design

The third phase will be defining how the office is set up: whether it should be a stand-alone office, or housed in a commission/board, or in an Executive Office.

Below, write out your considerations for each of the options. What are the pros and cons associated with each option? What would be the best solution for your program? Also look at section 5E, *Selecting a Permanent Home for Consumer Protection*.

Step Four: Finalize implementation strategy

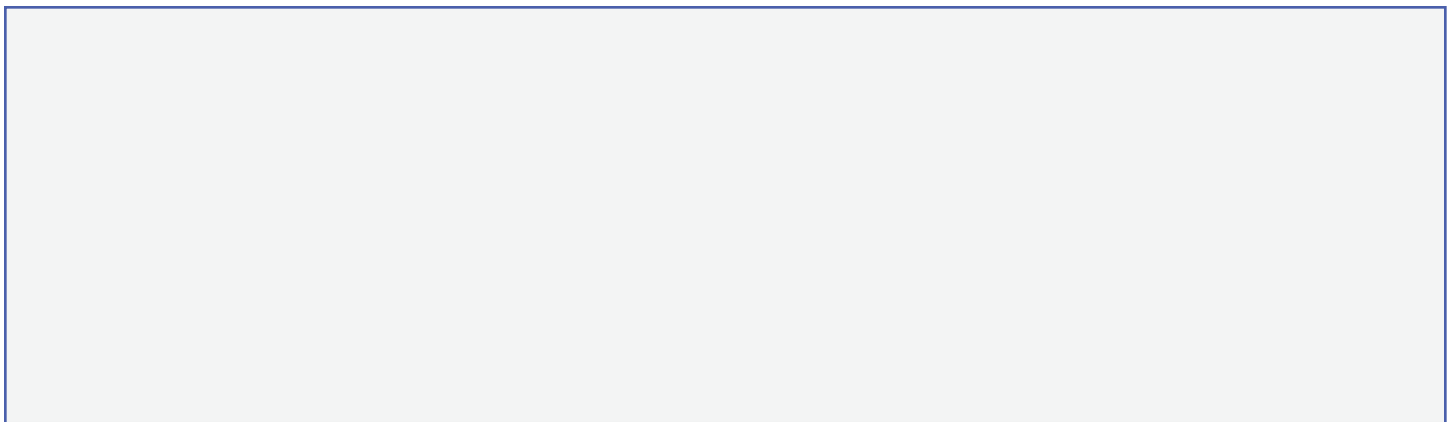
The last phase will be finalizing your implementation strategy, essentially developing your consumer financial protection strategic plan. Think about what kind of strategy you'll deploy to implement the plan; will it be phased in over time or will you use a 'laddering approach' that breaks down each step into smaller components? Of course, the information you glean throughout this process will provide additional considerations.



Managing Resources

As the CFPI lead, you'll be coordinating the Advisory Group. It's important that your meetings and overall engagement remain relevant and actionable; focus less on consumer protection theory and more on the realistic and attainable opportunities for your locality. Most stakeholders will already be 'bought in' to the importance of consumer protection – you're making the case for how to apply these strategies *locally*. It's often helpful to describe a three-part paradigm (e.g. Education, Complaint, and Enforcement) or a similar framework that will ensure that decision makers are guided by the core functions and purpose of your CFPI program.

Think about your local consumer protection environment. What are the frameworks that will resonate with the Advisory Group and grab the attention of your decision makers?



Section 3: Planning the Site Visit

Overview of Goals

- Foster support for the work from key leaders
- Convene the Advisory Group
- Define implementation strategy

Logistics & Scheduling

- Coordinate with CFE Fund on the timing and location of site visit meetings
- Key Participants: CFE Team, designated City staff, important internal and external stakeholders

Key Site Visit Meetings

- *Advisory Group Meeting* (1 hour): The CFE Fund facilitates a discussion in partnership with City team
 - The intent of this meeting is to introduce this key group to the initiative goals, provide national context, and get their feedback on the broader strategic planning work and have them share their insights.
- *Stakeholder Meetings* (1 hour, approximately 5-10 attendees each): This is an opportunity to have CFE Fund staff facilitate a conversation about the goals of the planning process, seek input about key priorities, and catalyze ongoing support from:
 - Community leaders (nonprofit and business)
 - Potential local philanthropic funders
 - City/county government leaders and elected officials

NOTES

Section 4: Building a Communications and Outreach Plan

Building consumer awareness of scams, frauds, and how to approach complex financial products such as student loans is a critical function of a consumer financial protection office. For example, the COVID-19 pandemic highlighted the importance of ensuring that vulnerable residents aren't taken advantage of by predatory actors as they confront the health and financial impacts of the virus.

Below are key elements of planning a consumer awareness campaign.

Step 1: Identify key consumer issues

The first step is to figure out the focus of your campaign — what are the specific issues that residents need to be aware of? For example, cities have seen scams ranging from calls from people pretending to represent the IRS with information on stimulus payments, to offers that prey on people's financial anxieties around debt consolidation or job opportunities. Local community and faith-based organizations, legal aid, and advocates can be good partners for identifying relevant issues.

List these key issues below:

Step 2: Identify key audiences for messages

Scams and frauds may be targeted at specific communities, like the elderly or immigrant communities. Identify which audiences are the targets of these scams, or are likely to be the most vulnerable to them.

Audiences:

Step 3: Identify key communications channels and messengers

For each audience you identified above, think about which communications channels, and what messenger, the audience would be most likely to pay attention to. For example, to reach immigrant communities, you might partner with your city's Immigrant Services agency, or look for opportunities to connect with local ethnic media outlets to get earned media around this issue. There may be trusted local leaders that will especially resonate with key audiences as well who can serve as important and credible messengers. In addition, think about the channels that the local government controls, from social media channels to public access television to the Mayor's talking points; these more general channels can bolster and amplify other targeted channels and messengers.

Audience	Potential Channels	Potential Messengers

Step 4: Craft the message and identify the call to action

In creating the consumer awareness message, keep language clear and concise. Explain the scam or fraud, clearly identify that it is a fraud, and provide the call to action – how can residents report that they have been a victim of the fraud and get help? You may also want to share the message with partners or organizations that serve the audience you are trying to reach, to ensure that it resonates with that audience.

What are some potential messages you might use? What is the call to action? What do you want your target audience to do as a result of the message?

Section 5: Strategic Plan Development Guide

The background of the page is a solid blue color. Overlaid on this are several large, semi-transparent, overlapping shapes in various shades of blue. These shapes include a large circle on the right side, a smaller circle below it, and a large, irregular shape that resembles a stylized letter 'Q' or a similar form on the left and bottom. The overall effect is a modern, abstract graphic design.

Section 5A: Telling the Story: Why Local Consumer Protection is an Important, Valuable Investment

Beyond the specific consumer awareness campaign you are planning, you should also think about how to broadly tell the story of why this work is critical. Below are some potential frames for telling the consumer financial protection story and making the political case for this work.

Which of these resonate with you? Which might work in your local political context? What type of stories would you need to gather to fit these frames?

- Consumer protection represents a fair market/level playing field
- In the face of COVID-19, vulnerable residents and communities need more protection than ever to safeguard their assets
- This work is about equity and fairness
- Consumer financial protection is about standing up for the little guy (individual consumers, small businesses)
- Consumer financial protection affirms our local values
- Protecting affinity groups (vets, teachers) is important to our city
- City government has residents' backs
- Our city is experimenting with new, non-traditional partnerships to help residents move forward
- Consumer financial protection is the flip side of government asset-building programs
- The COVID-19 pandemic has shown that predatory actors are quick to take advantage of the crisis and target vulnerable populations

Section 5B: Identifying Important Stakeholders for Local Consumer Protection

This process will help you identify broader stakeholders that are connected to your local consumer protection field. As mentioned earlier in this workbook, the Advisory Group members are a smaller subset of stakeholders that will provide more intensive help in the development of your consumer financial protection plan; this exercise will help you identify a broader set of all relevant stakeholders in the local consumer financial protection environment.

Intergovernmental Stakeholders

Across your city administration, list any departments that engage in consumer protection or business oversight activities – e.g. licensing, permitting, zoning, consumer issues, investigation and enforcement. Is there a county government layer that engages in any of these activities? If so, list any departments or specific individuals. List any state-level entities, such as the Attorney General, focused on consumer protection.

Political Stakeholders

In addition to your Mayor, list any important political figures in your local, county, or state government that could potentially be either champions or barriers to advancing a consumer protection effort.

Community Stakeholders

List any nonprofit organizations that are actively involved in consumer advocacy or provide financial empowerment services, such as financial counseling and education, savings and asset building, and access to banking.

Private Stakeholders

List any private businesses or business organizations that could serve as barriers or champions.

Potential Funder Stakeholders

List potential funders, both across city government and outside of city government, for consumer protection efforts.

Other Potential Stakeholders

List other partners that could be stakeholders in this work.

Section 5C: Identifying and Selecting Key Consumer Protection Priorities

List all potential industries of concern and the extent of their presence in your city, as well as the effect they have had in your community. Examples include payday loan stores, check cashers, used car dealers, employment agencies, title lenders, pawnbrokers, debt collectors, debt buyers, paid tax preparers, notarios, etc. You might think specifically about key consumer protection priorities that a COVID consumer awareness campaign could address, as well as more broadly about priorities beyond COVID-related issues.

Business type and prevalence in your city	Why it's an important industry concern

Section 5D: Overview of Primary Consumer Protection Tools

Complaint Intake and Mediation

A mechanism for local residents to communicate problematic business interactions directly to responsible agency staff, with a process for mediation and resolution.

Examples include:

- New York City
- Los Angeles County
- Cuyahoga County (OH)
- Salt Lake City
- Denver

Regulation, Investigation, and Enforcement

Cities and counties with local authority to regulate businesses working in its jurisdiction can impose industry-specific disclosure and business practice requirements to improve protections for consumers and investigate and enforce accordingly.

Examples include:

- Debt Collector Agencies (Chicago, NYC)
- Employment Agencies (NYC)
- Pawnbrokers (Chicago, NYC, Philadelphia)
- Used Car Dealers (Chicago, NYC)
- Income Tax Preparers (Chicago)
- Payday and Title Lenders (San Antonio)
- Bail Bonds Agents (Cleveland)
- Refund Anticipation Loans (Seattle)

Cities and counties with local authority (native or delegated) to enforce general business practice regulations, such as Unfair, Abusive, and Deceptive Practices (UDAP) laws, can investigate and enforce against businesses that engage in such illegal practices, including misleading pricing, false advertising, and other practices that lead to substantial harm.

Examples include:

- NYC General Consumer Protection Law for Deceptive and Unfair Practices
- NYC Disclosure Requirements for Refunds, Layaway, and Used Items
- Albuquerque Anti-Price Gouging Ordinance
- Salt Lake City False Advertising Law
- Chicago Prohibition on Consumer Fraud, Unfair Competition, and Deceptive Practices

Cities and counties can assert their interest in the health and welfare of residents by regulating the physical locations of certain types of businesses and investigate and enforce accordingly. Cities and counties can also utilize the same health and welfare interest to regulate those businesses' physical signage.

- Payday and Title Lenders Location (San Antonio, Chicago)
- Payday and Title Lenders Signage
- Check Cashers Location (Oakland, Nashville)

Consumer Awareness and Education

Cities and counties have a platform to inform and educate consumers on an ongoing basis about key issues of concern such as avoiding scams, frauds, and deceptive practices as well as guidance on making good consumer decisions.

- “Know Before You Enroll” Proprietary School Awareness Campaign (NYC)

Section 5E: Selecting a Permanent Home for Consumer Protection

Selecting a home within local government structure to house consumer protection involves a number of considerations including alignment with the department’s mission, access to resources, strong leadership and stability through political changes.

List potential city/county government homes for consumer protection work, as well as any challenges or necessary steps related to the potential location.

Potential Location	Challenges, Necessary Steps

Section 5F: Staff Roles for a Consumer Protection Office

Based on the consumer protection tools your city or county will employ, these are the array of staff roles that could come into play:

- **Leadership** — Your consumer protection office, however structured or situated, will need dedicated leadership.
- **Communications Staff** — Communications is a key component to public education and political stakeholder engagement, as well as outreach to both consumers and regulated businesses.
- **Complaint Intake and Mediation Staff** — Frontline call center staff that are trained to take in complaints from consumers. Sometimes, these staff are also responsible for the initial mediation process between consumers and local businesses.
- **Inspectors** — Trained staff that inspect businesses for compliance with local regulations, and have the authority to issue violations for adjudication.
- **Attorneys** — Legal specialists responsible for prosecution strategies of violations, settlements, and affirmative litigation, as well as for managing investigatory activities.
- **Investigators** — Sometimes performed by specialized attorneys or paralegals, and sometimes aided by skilled inspectors, investigators are trained in undercover and document review to uncover violations of the law not necessarily apparent by visual inspection.
- **Administrative Law Judges** — Judges empowered to preside over the hearing and adjudication of charges issued by the consumer protection department, generally in a more evidence-relaxed setting.
- **Settlement Officers** — Staff that work with businesses that have been assessed violations to settle charges rather than proceed through a formal administrative hearing.
- **Collections Staff** — Staff that oversee the collection and processing of fines owed.
- **Clerical Support** — Administrative staff aiding in the array of activities and data systems of the department.

Section 5G: Planning for Economic Sustainability

Ensuring that your consumer financial protection efforts are economically sustainable over time, including through political transitions, is a critical component of the planning process. Identifying diverse funding sources to build and maintain key consumer protection infrastructure is particularly important.

Private Funding Sources

Does your City/County have a history of working with local/state/national philanthropic funders? If so, list those engagements and identify how local government or external champions helped secure that funding.

Public Funding Sources

Working across local government to identify funding will be a critical part of your sustainability effort. The budget process is a good place to start; it offers the CFPI Lead the opportunity to work with department heads and other budget representatives to secure a general fund request for CFPI operations, including funding allocated from other departments (e.g. business licensing; zoning and planning; landlord permitting, etc.). Review the budgets of offices/departments that are managing or enforcing consumer and/or business affairs. Identify which departments would be good targets for CFPI investment.

Private-Public Partnerships

Leveraging a core investment from the City/County can be a 'hook' for private funders to contribute towards your Consumer Financial Protection initiative. Even if the government investment is only in the form of dedicated staff time, the hook is especially important to demonstrate the local government's commitment to consumer financial protection issues. This can be used as a hook for the philanthropic supports who are interested in proactive, solutions-based investments that target results further 'up-stream.' Has your locality had Private-Public Partnerships (otherwise known as P3) projects in the past? List the project and the results below. How would you think about a project in the consumer protection field?

“Public-Public” Partnerships

The enforcement of consumer protection in your state may be largely handled at the state level. Think about what state departments are included in the consumer protection field and the interplay between them. For example, the Attorney General may enforce the consumer protection statute, but the code interpreting a specific business license or registration program may vest a department with investigatory or administrative authority. How would that department’s process/enforcement improve if the CFPI received a state grant to assist?

Permits and Fees

Pay close attention to potential permit and fee revenue that might be used to support the CFPI. Think about new government regulation on the horizon, such as those for short-term rental properties (like Airbnb or HomeAway, commonly referred to as STRP’s) or electric scooters. For example, STRPs allow individuals to rent their homes out to others; cities large and small have started regulating these ventures, often requiring a permit and imposing a fee to operate an STRP. Some cities have required a portion of this revenue to fund an affordable housing trust fund, but it could also be an opportunity to negotiate a portion of the fee revenue for dedicated consumer financial protection support. What are similar examples in your City/County?

Section 5H: Example Table of Contents for Final Strategic Plan

Example Table of Contents

1. Introduction: Why Local Consumer Protection in XXXX **City**? *Setting the stage for your initiative*
 - a. Impact of Predatory Products and Services on Neighborhoods and Communities
 - b. How Local Government Can Make a Difference

2. XXXX City Consumer Protection **Strategy** *Focus on short- and long-term targets and strategies*
 - a. Critical Priorities and Targets
 - b. Consumer Protection Tools to be Employed
 - c. State and Local Legislative **Strategy** *Identify critical policy and legal issues to be resolved. I.e. acquiring necessary authorities etc.*

3. XXXX City Organizational Strategy
 - a. Where The Work Will Live *I.e. data systems, websites, etc*
 - b. Staffing Resources and Needs
 - c. Other Infrastructure **Needs** *Outline short- and long-term funding needs to be successful*
 - d. Short- and Long-Term Projected **Budget** *Outline potential public and private resources to support this work*
 - e. Resources for **Sustainability** *Your general strategy for engaging the public in this work*
 - f. Ongoing Messaging and **Communications**
 - g. Data Collection for Performance Management and Measuring Impact

4. Key **Stakeholders** *Describe stakeholders who are important to this effort, what their role is, and how you plan to engage them*
 - a. Intergovernmental
 - b. Political
 - c. Nonprofit Community Organizations
 - d. Business Community

5. Immediate Action Steps

Section 6: General Legal Primer on Regulation and Enforcement

Regulatory and Enforcement Strategies for Municipal Consumer Protection

This briefing paper discusses municipal strategies for consumer protection and their legal backdrop. It considers three general consumer protection tools available to cities, beyond consumer empowerment activities: (1) identifying and addressing consumer complaints within the jurisdiction; (2) enforcing available local, state, and federal law; and (3) regulating products and practices in certain consumer financial markets. The impact of a consumer protection initiative depends not only on available tools but how they can be combined and leveraged—to identify problem industries, to address particularly harmful practices, and to ultimately change market behavior.

Consumer Response

Local jurisdictions are well placed to be a first point of contact for constituents with consumer complaints. A very small proportion of consumers targeted with deceptive or unfair business practices file a complaint, and experts view consumer protections as under-enforced as a general matter. Local consumer affairs offices can be more familiar, approachable and individually responsive than state or federal regulators. Intake and casework can provide a window onto constituent concerns, help track developing problems, and provide real service and satisfaction for constituents through resolution of complaints.

Full consumer response model: At its most ambitious, a consumer complaint initiative can mean a city creating its own consumer response program. A municipal consumer response program would need to be well-staffed, have a process for intake and management of complaints, and be widely available to constituents through multiple communication channels. For example, jurisdictions like New York City and Cuyahoga County (Ohio) accept consumer complaints submitted online (and through other channels), agency staff review complaints and contact the consumer to gather information and may ask the business to resolve the complaint. Special authorities are not essential for consumer complaint mediation as it can be a voluntary process; however, cities may be able to leverage their business licensing authority to require participation (at least in the nature of a response) by their licensees. If the local consumer affairs office lacks enforcement authority, scams and bad actors can be referred to relevant enforcement agencies; cities can play a role conducting first line information gathering and “packaging up” a complaint to facilitate enforcement. However, the response effort will have greater effect if the local consumer agency has native enforcement authority it can leverage to subpoena records and penalize bad actors. For example, where a resident reports a deceptive mailing, the response effort is strengthened by the local agency’s authority to subpoena addresses of all local residents receiving the deceptive mailing—for enforcement and to warn recipients.

Referral model: A less resource-intensive version of a consumer complaint program could designate a municipal office to accept complaints on consumer matters and refer those to the federal Consumer Financial Protection Bureau (CFPB) and other appropriate state and federal agencies. Referral training can be shared with partner local agencies and organizations, such as police and information lines, to ensure that incoming consumer complaints are identified and routed to the city consumer office. However, to be an effective consumer protection division, a city’s program would need to go further than simply referring complaints.

Data tracking: A successful municipal consumer complaint program will track and code its complaint intake to generate data to identify emerging problem areas, including industries that generate large numbers of complaints and particularly harmful practices. Likewise a successful program will track complaint resolution and outcomes. Was the consumer’s dispute resolved? Was restitution paid? Was local or partner enforcement initiated? The data and analysis from the consumer complaint program will help target enforcement efforts, underpin regulation to address evolving industry practices, and shed light on constituent needs and the impact of a robust municipal consumer affairs effort.

Data analysis: Further, a successful consumer complaint program could regularly analyze CFPB consumer complaint data through the CFPB’s online portal—and also enter into agreements with appropriate state agencies to obtain any state consumer complaint data—to identify issue patterns within the local jurisdiction. In a less resource intensive program, this data analysis would enable the city to focus the use of other tools on the issues facing residents without needing to create an entire consumer response process itself. With the latter approach, the city could also refer complaints to the

CFPB or appropriate state agencies, but would not be expected to mediate the complaints itself. To be successful, a city would need to use analysis of consumer complaints as one aspect of a broader consumer protection strategy and be willing to use other available tools to address areas of concern.

Listening mechanisms: Most consumers never report fraud, scams or unfair business practices. In addition to complaint monitoring, jurisdictions can create formal and informal mechanisms to solicit constituent views and experiences to better target efforts and to build momentum around programmatic solutions. This might take the form of neighborhood listening sessions organized with the assistance of local social service and neighborhood organizations. In conjunction, cities could create an advisory body of local community and social service representatives to channel ongoing recommendations for industries and practices investigate. On a more formal level, cities may be able to create an advisory commission to conduct hearings and deliver a report and recommendations for city council (or state) legislative action. A formal commission would require quality staff (either municipal or borrowed from a nonprofit) to be effective and deliver quality recommendations. A strong city comptroller office could be a good partner in supporting a commission and generating useful analysis.

Enforcement

Existing enforcement authority varies widely by state. A successful enforcement program could include several mutually supporting pieces: (1) authority to enforce relevant local, state, and federal law natively or through enforcement partnerships; (2) administrative process to issue and adjudicate fines for consumer violations; (3) inspection protocols for businesses and enforcement sweeps; (4) legal team to enforce complaints in court and develop affirmative litigation to protect constituents; and (5) self-funding authorities.

Enforcement authority: Enforcement authority is distinct from regulatory authority. Enforcement authority may stem from local, state or federal law. Local governments may be able to enforce existing law in areas where they may not be able to regulate, due to lack of regulatory authority or preemption. For example, seven states delegate to municipalities some measure of enforcement authority for state unfair business practices (“UDAP”) laws (California, Mississippi, Missouri, New Jersey, South Carolina, Texas, and Virginia) and eleven authorize district attorney enforcement (Alabama, California, Colorado, Michigan, Mississippi, Nebraska, Nevada, Oklahoma, Oregon, Pennsylvania, and Texas). Many federal consumer statutes—including the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”)—also delegate some enforcement authority to states or specific state entities, like the attorney general or financial regulators. Since municipal governments generally are viewed as “mere subdivisions” of a state government for federal purposes, their role in discharging any delegated state or federal enforcement authority would be set by state law (so long as consistent with the originating federal statute). For example, California law provides standing to certain cities and counties to enforce the state’s unfair competition law, which prohibits unfair, deceptive, fraudulent, and unlawful business practices, and false marketing. Moreover, some federal statutes, like the Clean Air Act, also provide directly for local enforcement of federal law and others, like the Immigration and Naturalization Act, provide a mechanism for federal agencies to partner with local enforcement agencies and deputize them to conduct federal enforcement. Additionally, some state UDAP laws prohibit “unlawful” business practices; this catch-all provision can enable a state (or a city or district attorney, if empowered) to police violations of other federal and state statutes as UDAP violations even where the jurisdiction cannot enforce the underlying statute. Possible approaches to expand local enforcement authorities will be discussed further under local regulation below but it may be fruitful for cities to carefully explore the fullest extent of their existing enforcement authorities.

Partnerships: Enforcement may also be effected through partnerships. Federal consumer agencies, like the Federal Trade Commission (FTC) and CFPB, have entered joint enforcement arrangements or conducted joint enforcement operations with state and local jurisdictions—including municipalities. Federal joint enforcement agreements may constitute a framework agreement to establish the groundwork for data sharing and maintenance of privilege between law enforcement agencies and may contemplate specific agreements for future joint enforcement actions. Likewise, local jurisdictions might consider formalizing a partnership with other local or state enforcers (for example, the district attorney or state financial regulator) to leverage available enforcement authorities—county district attorneys are often treated as creatures of the state government (despite being locally elected) and able to directly enforce state law. Partnerships and joint enforcement arrangements can leverage the different capabilities and authorities of the partners (a city’s boots-on-the-ground investigators and an enforcer’s legal muscle), but brings with them the legal complexity of each partner’s limitations and obligations.

Administrative process: For available authorities, a key dimension is ease of enforcement—enforcement of local code violations through administrative penalties (like fines) adjudicated “in-house” by a city or county tribunal and enforceable as a money judgment requires substantially fewer resources and permits more vigorous and rapid enforcement. For example, New York City Department of Consumer Affairs (NYC DCA) can assess administrative penalties for code violations and adjudicate appeals through an administrative process, enabling NYC DCA to conduct broad enforcement sweeps of whole industries and assess penalties against noncompliant businesses. Bringing cases in state court (either directly or with the assistance of a partner, such as the district attorney or state agency) requires scarce legal bandwidth, limiting the amount of enforcement a consumer office can undertake, and may draw-out timelines into months and years as cases percolate through the courts. Local jurisdictions may have some form of both fining authority and administrative adjudication already in place for weights and measures violations and business licensees, or the jurisdiction may have a generic penalty and adjudication process for all violations of local code. For example, while NYC DCA had an established administrative process to adjudicate matters involving its business licensees, changes to the city charter later enabled NYC DCA administrative judges to hear and resolve complaints against unlicensed businesses under NYC DCA’s relevant code sections and granted NYC DCA the ability to enforce its final orders as if they were civil money judgments, greatly increasing their collectability (see New York City Charter Ch. 64, Sec. 2203(h)). Jurisdictions might examine whether they can utilize existing fining and adjudication procedures to process violations of local consumer codes or whether local codes need to be amended to create such a process.

Inspections and sweeps: A successful enforcement program can target enforcement resources to conduct field inspections and enforcement sweeps of problem industries, aided by data from the city’s consumer complaint initiative and the efficiency of an administrative penalty process. While state and local frameworks vary significantly, two key sources of authority for field inspections may be business licensing authority and weights and measures authority. Many cities have authority to require a license or registration from entities seeking to do business within the jurisdiction; this licensing requirement often can be additional to any relevant state license. For example, NYC DCA licenses more than 80,000 businesses in more than 50 categories of industry, and NYC DCA has established and published detailed inspection protocols¹ for many types of businesses, covering applicable local and other rules (e.g., FTC Used Car Rule requirement to post a buyers guide). Depending on the jurisdiction, licensing authority may be able to underpin requirements that certain businesses operate with a license, submit to pre-licensing reviews, comply with applicable laws, post required disclosures, maintain certain records, and submit to ongoing inspections. In some circumstances—debt collectors, for example—NYC licensing code grants the NYC DCA Commissioner subpoena-like power to inspect business records and compel witnesses to appear (see NYC Code §20-493). Weights and measures authorities may give an agency the ability to inspect a variety of elements related to a sales transaction.

Inspections can be used in a number of ways to support consumer affairs impact: routine visits can maintain compliance with signage and disclosure requirements, and focused industry sweeps can target specific problem practices and complement consumer and business education campaigns. For example, in 2015, NYC DCA conducted education outreach to tax preparers on compliance with city disclosure requirements before undertaking an enforcement sweep that discovered that 25% of tax preparers were not compliant, resulting in 450 violations; NYC DCA used the sweep as an opportunity to highlight, at tax time, local requirements on NYC tax preparers and the city’s free tax preparation service for low income residents. Similarly, NYC DCA leveraged its weights and measures authority to conduct a citywide sweep of grocers, revealing that over 70% inaccurately weighed and labeled food on their shelves. Whole Foods Market had significant problems—no label was found to be correct at eight locations—and Whole Foods settled with the city for \$500,000 in fines and an agreement to conduct quarterly in-store audits. With particularly problematic industries, it may be possible to justify subpoena-like power and regular scrutiny; however, conducting supervisory-type inspection of business books and records requires a level of sophistication (and even specialization) that can be difficult to staff. In sum, leveraging existing business licensing and weights and measures rules through targeted sweeps can increase the impact and visibility of the City’s consumer office and change market behavior.

Affirmative litigation: A successful enforcement program will require that the locality has attorneys within the city or county attorney’s office or the consumer protection division that have the authority to bring legal action under local, state, or federal consumer law. Jurisdictions might consider designating an affirmative litigation task force in the city or county counsel’s office to consider and pursue litigation to enforce available local, state, and federal laws for the benefit of constituents and work closely with the consumer affairs section to bring enforcement actions in state courts as needed.

Alternately, the consumer affairs team may employ attorneys and investigators to identify enforcement targets, develop affirmative legal action on behalf of the municipality, and have the legal authority to issue subpoenas to, file suit against, and enter into settlement negotiations with consumer financial services providers. Cities could bring actions on their

own or partner with local district attorneys or the state attorney general, but should have their own designated resources to identify targets and pursue enforcement actions. In cities without native enforcement authority, local officials could identify patterns of complaints and work with district attorneys, state attorneys general, financial regulators, or the CFPB to encourage action on those issues. Local officials could also examine existing state laws and consider whether there is an opportunity to seek legislative changes to extend state enforcement authority to certain local governments.

As an example, California law provides standing to certain cities and counties to enforce the state’s unfair competition law, which prohibits unfair, deceptive, fraudulent, and unlawful business practices, and false marketing (see Cal. Business and Professions Code Sec. 17206). Thus, these cities can enforce applicable state law, even if municipal substantive regulation in certain markets would be preempted.

Self-funding authorities: a successful enforcement program will benefit from the ability to support consumer protection work through administrative fines, licensing fees and civil recoveries. For example, California fair competition law includes a judgment-sharing provision that splits recoveries (in a public action) between the jurisdictions involved in the suit for exclusive use for enforcement of consumer protection laws. Consequently, Prof. Kathleen Morris—founding executive director of San Francisco’s Affirmative Litigation Task Force—has argued that “a carefully-constructed affirmative litigation docket should pay for itself with recouped damages, costs, and civil penalties.”² California’s unfair competition law is particularly generous in a number of ways, and other jurisdictions face a tougher road to self-funding.

Regulation

Depending on the extent of state preemption and delegated authority from the state, some cities are able to regulate the practices of businesses operating within their jurisdiction. This approach to municipal regulation requires a city to identify areas that are not fully preempted.

Federalism and preemption: Federal and state law are superior to local law and may preempt local regulation. In considering regulatory options, cities will need to analyze: (1) what native or delegated authority they possess that could advance a target objective, (2) whether state or federal law already regulate the subject, and (3) if state or federal law regulates the subject, whether those laws conflict with or otherwise preempt the proposed local action.

For most purposes, local jurisdictions are subdivisions of their states, and their authorities flow from their states—typically by statutory delegations or through a chartering process establishing the city’s powers. However, constitutional frameworks differ by state, and some leave a great deal of “Home Rule” authority in city hands, absent limitations by the state legislature. Cities will face different substantive and procedural limits on their regulatory abilities.

Federal law is supreme (it wins when laws are in conflict), but it can also preempt (prevent a state or locality from regulating at all). A general presumption exists against federal preemption in areas where states historically have exercised power unless “the clear and manifest purpose of Congress”³ is to preempt state law. The U.S. Supreme Court has held that “when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily ‘accept the reading that disfavors pre-emption.’”⁴ While state law regarding local ordinance preemption may vary, at least some states employ a similar presumption against pre-empting local ordinances.⁵

The touchstone of preemption analysis is the intent of the legislature—whether Congress or a state legislature intended to preempt additional regulation. Just because a federal or state law regulates in an area does not mean local governments are necessarily preempted. Courts’ basic analytical approach to preemption considers the intent and structure of a statute and asks: does the statute *expressly*⁶ preempt state and local regulation of the topic, and if not, does it *impliedly* preempt state regulation. In considering whether preemption is implied, courts ask: (1) do the laws conflict such that compliance with both is impossible; (2) does the state statute “stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress;”⁷ and (3) is the federal regulatory scheme “so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.”⁸ This latter rationale is sometimes referred to as “field preemption” because Congress is understood to have occupied the entire field for a given topic. However, preemption analysis is tricky and fact intensive, and “[e]ven when the Legislature gives an administrative agency extensive authority to regulate a given subject-matter, a municipal ordinance that establishes a parallel registration, licensing, and/or permitting program is not necessarily preempted.”⁹ For example, though Texas heavily regulates oil and gas, still a municipality may regulate drilling of wells within its borders. Where there is a potential conflict, a local ordinance may be less likely to be preempted if it articulates a non-conflicting purpose and addresses its “complementary” relation to potentially conflicting federal/state law.

Business licensing: Successful municipal regulation can use the city’s business licensing process to impose consumer protections. For example, in New York City, municipal law provides consumer protections applicable to debt collectors licensed by the city that go beyond state and federal laws covering debt collection practices. And in Austin and other cities across Texas, the city has enacted substantive regulation of payday and auto title lending practices through a municipal ordinance requiring registration of credit access businesses operating within the jurisdiction (note that a municipal court recently ruled that the Austin ordinance is preempted by Texas state law and the issue is likely to be appealed).

Health and safety regulation: A city could also assert its interest in health and welfare through regulating the physical locations of certain consumer financial service providers. Prof. Chris Peterson has proposed that cities require high-cost lenders to post warning signs, akin to other state and local signage requirements.¹⁰ Similarly, many cities across the country exercise their authority over land use to limit the location of payday lenders and certain other financial services providers through zoning requirements. These efforts communicate the city’s concern about these businesses and potentially limit the exposure of residents to storefronts. However, for a municipal consumer protection division to be successful, this sort of regulation would need to be part of a larger effort using additional consumer protection tools.

Carrying regulations into practice: Cities that incorporate substantive consumer protection regulation into their local codes should be prepared to defend and enforce those laws. At its most robust, this means that the city has authority and staffing to examine the activities of licensees through inspection visits and enforce the law through administrative and civil penalties sufficient to deter bad behavior.

¹Available at: <http://www1.nyc.gov/site/dca/businesses/inspection-checklists.page>.

²Kathleen S. Morris, “San Francisco and the Rising Culture of Engagement in Local Public Law Offices,” in “Why the Local Matters: Federalism, Localism, and Public Interest Advocacy,” *Papers from the Eleventh Annual Liman Colloquium at Yale Law School* (2008), pp. 51-66, at 61. Available at: https://law.yale.edu/system/files/documents/pdf/liman_whyTheLocalMatters.pdf.

³*Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

⁴*Altria Group, Inc. v. Good*, 555 U.S. 70 (2008) (quoting *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005)).

⁵See *Austin Police Ass’n*, 71 S.W.3d at 888 (Tex. App. 2002).

⁶See, e.g., TEX. ALCO. BEV. CODE ANN. § 1.06 (“Unless otherwise specifically provided by the terms of this code, the manufacture, sale, distribution, transportation, and possession of alcoholic beverages shall be governed exclusively by this code”).

⁷*Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

⁸*English v. General Electric Co.*, 496 U.S. 72, 79 (1990).

⁹*City of Houston v. BCCA Appeal Group, Inc.*, No. 01-11-00332-CV, 18 (Tex.App.—Houston [1st Dist.] 2013, pet. filed) (citing *Unger v. State*, 629 S.W. 2d 811, 812-13 (Tex.App.—Fort Worth 1982, writ ref’d).)

¹⁰Peterson, Christopher Lewis, “Warning: Predatory Lender” - A Proposal for Candid Predatory Small Loan Ordinances (December 13, 2011). *Washington and Lee Law Review*, Vol. 69, No. 2, 2012; University of Utah College of Law Research Paper No. 14. Available at SSRN: <https://ssrn.com/abstract=1971971>.

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