

CFPB Enforcement and the Biden Administration

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Andrew Arculin

Partner | +1 202.344.4588 | raarculin@Venable.com

Allyson Baker

Partner | +1 202.344.4708 | abaker@Venable.com

Meredith Boylan

Partner | +1 202.344.8062 | mlboylan@Venable.com

Allen Denson

Partner | +1 202.344.4680 | ahdenson@Venable.com

Erin Cass

Associate | +1 202.344.4452 | ezcass@Venable.com

VENABLE LLP

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Overview

- Leadership Update
- Enforcement Process Overview
- Expected Areas of Focus
 - COVID-19
 - Fair Lending & Equity
 - Student Loan Servicing
 - Small Dollar Lending
 - Non-Bank Fintech Companies

Leadership Update – Nominee Rohit Chopra

- FTC Commissioner (May 2018-present)
 - “Commissioner Chopra has actively advocated to promote a fair and fully-functioning marketplace through vigorous agency enforcement that protects families and honest companies from those that break the law. During his tenure at the FTC, he has pushed for aggressive remedies against lawbreaking companies, especially repeat offenders, and has worked to reverse the FTC’s reliance on no-money, no-fault settlements.”
- Special Adviser to the Secretary of Education (2016)
 - Chopra served as Special Adviser to the Secretary “to advance the Department’s efforts to improve student loan servicing, reduce unnecessary defaults, and bolster enforcement.”
- CFPB Assistant Director and Student Loan Ombudsman (2010-2015)
 - “Chopra joined the Department of the Treasury to launch the [CFPB]. He then served as Assistant Director of the CFPB, overseeing the agency’s student loan agenda. The Secretary of the Treasury also appointed him to serve as the CFPB’s Student Loan Ombudsman.”
 - “In these roles, he led efforts to spur competition in the student loan financing market, develop new tools for students and student loan borrowers to make smarter decisions, and secure hundreds of millions of dollars in refunds for borrowers victimized by unlawful conduct by loan servicers, debt collectors, and for-profit college chains.”
- McKinsey & Company (2008-2010)
- Harvard (BA) / University of Pennsylvania (MBA)

Leadership Update – Nominee Rohit Chopra

- On March 11, 2021, the Senate Committee on Banking, Housing, and Urban Affairs, in a tie vote (12-12), advanced the nomination of Rohit Chopra for the position of CFPB director to the Senate floor.
- In response to questions from the Committee, Mr. Chopra made it clear that as director, he would immediately focus on student lending as well as protecting veterans, enforcing the fair lending laws, and ensuring the equal treatment of small business owners.
- Mr. Chopra also highlighted the particular role of innovation. He stressed that the Bureau should take a "hard look" at the nature of innovation in financial services and how data is used. Here, he focused on how emerging technologies might change the nature of credit reporting agencies and payment systems.

Leadership Update – Nominee Rohit Chopra

**Prepared Statement of
Commissioner Rohit Chopra
Before the United States Senate
Committee on Banking, Housing, and Urban Affairs**

March 2, 2021

Other persistent pain points for consumers are particularly acute today, making it harder for families to get back on their feet. Consumers continue to discover serious errors on their credit reports or feel forced to make payments to debt collectors on bills they already paid or never owed to begin with, including for medical treatment related to Covid-19. Many of these longstanding, pervasive problems will make it more difficult for our country to sustain a full recovery.

This is especially true when it comes to the housing market. For most of us, much of this last year has been spent at home. Our homes are more than physical structures: they have served as offices, schools, and much more, providing safety and refuge during a deadly pandemic.

In the mortgage market, fair and effective oversight can promote a resilient and competitive financial sector, and address the systemic inequities faced by families of color. Perhaps most importantly, administration of consumer protection laws can help families navigate their options to save their homes.

Leadership Update – Acting Director Dave Uejio

January 28, 2021 statement regarding the priorities of the CFPB in the coming months:

- “One thing we can do immediately is focus our supervision and enforcement tools on overseeing the companies responsible for COVID relief.”
- Concerned regarding examiner findings that:
 - “Mortgage servicers gave consumers incomplete and inaccurate information about CARES Act forbearances, failed to process forbearance requests, and collected and assessed late fees despite having approved forbearances.
 - Servicers withdrew money even though consumers were in deferment.
 - One student loan servicer denied thousands of forbearance extensions because the loan holder never responded.
 - Companies across markets misreported accounts to credit bureaus and violated CARES Act amendments that added protections to the Fair Credit Reporting Act.
 - Some banks set off stimulus payments and unemployment insurance benefits in order to cover bank fees and other debts.
 - Examiners found that the widely used policy of banks only taking PPP applications from pre-existing customers may have a disproportionate negative impact on minority-owned businesses.”

Leadership Update – Acting Director Dave Uejio

“Moving forward, the CFPB will take aggressive action to ensure that regulated companies follow the law and meet their obligations to assist consumers during the COVID-19 pandemic.

With that in mind, I have directed SEFL to always determine the full scope of issues found in its exams, systemically remediate all of those who are harmed, and change policies, procedures, and practices to address the root causes of harms. For the Prioritized Assessments that do not already do this, I want Supervision to follow up to ensure it is done, without conducting new follow-up exams. Companies that have not already received instructions from our examiners should expect to receive letters in the mail soon.

In some cases, penalties may be necessary. I have also directed SEFL to expedite enforcement investigations relating to COVID-19 so that we can take action now to ensure that industry gets the message that violations of law during this time of need will not be tolerated.”

Leadership Update – Acting Director Dave Uejio

“Over the coming weeks, we will also be reversing policies of the last administration that weakened enforcement and supervision. As of today, it is the official policy of the CFPB to supervise lenders with regard to the Military Lending Act. And we are planning to rescind public statements conveying a relaxed approach to enforcement of the laws in our care.

It’s also time for the CFPB to take bold and swift action on racial equity. I know this is close to the hearts of many of you. The country is in the middle of a long overdue conversation about race, and as we all know, practices and policies of the financial services industry have both caused and exacerbated racial inequality. I am going to elevate and expand existing investigations and exams and add new ones to ensure we have a healthy docket intended to address racial equity.

This of course means that fair lending enforcement is a top priority and will be emphasized accordingly. But we will also look more broadly, beyond fair lending, to identify and root out unlawful conduct that disproportionately impacts communities of color and other vulnerable populations.”

Enforcement Process Overview

- Civil Investigative Demands
- Investigative Process
- Consent Orders & Proposed Consent Judgments
- Litigation
- Interaction Between Supervision & Enforcement

Expected Areas of Focus

- COVID-19 Crisis
- Fair Lending & Equity
- Student Loan Servicing
- Small Dollar Lending
- Non-Bank Fintech Companies

COVID-19

- April 1, 2021: Rescinded seven policy statements issued from March 26 through June 3, 2020 in response to COVID-19 and the staffing and resource challenges faced by financial institutions, which allowed financial institutions flexibility regarding certain regulatory filings and regulatory compliance.
 - “The Bureau hereby rescinds, as of April 1, 2021, the Statement and announces its intent to exercise its supervisory and enforcement authority consistent with the Dodd-Frank Act and with the full authority afforded by Congress consistent with the statutory purpose and objectives of the Bureau.”
 - “Declining to cite conduct consistent with the full scope of the Bureau’s supervision authority ... may skew the consumer financial marketplace, to the detriment of market participants who comply with the law. To fulfill its statutory mandate, the Bureau has made it a priority to direct its supervisory, enforcement, and other tools to the prevention of harm to consumers from unlawful acts, policies, and practices. **It is therefore of critical importance that institutions adhere to consumer protection requirements, including fair lending laws, in their interactions with consumers, and that the Bureau use its supervisory and enforcement tools to the full extent and with the full flexibility afforded by Congress.**”

COVID-19

- April 1, 2021 Compliance Bulletin: “The Bureau will be paying particular attention to how mortgage servicers respond to borrower requests for loss mitigation assistance and process loss mitigation applications. The Bureau urges servicers to dedicate sufficient resources and staff to ensure they can communicate clearly with borrowers, effectively manage borrower requests for assistance, promote loss mitigation, and ultimately reduce avoidable foreclosures and foreclosure-related costs. **Accordingly, the Bureau intends to consider a servicer’s overall effectiveness at achieving such goals, along with other relevant factors, in using its discretion to address violations of Federal consumer financial law in supervisory and enforcement matters.**”
 - “The Bureau plans to monitor servicers’ engagement with borrowers at all stages in the process in the coming months and prioritize mortgage servicing oversight work in deploying its enforcement and supervision resources in the coming year. The Bureau expects servicers to plan for the expected increase in loans exiting forbearance programs and related loss mitigation applications, as well as applications by borrowers who are delinquent but not in forbearance.”
- April 5, 2021: CFPB described proposed rule changes to:
 - provide a special pre-foreclosure review period that would generally prohibit servicers from starting foreclosure until after December 31, 2021 (currently seeking comments to determine if “there are more limited ways to achieve the same purpose”)
 - permit servicers to offer certain streamlined loan modification options to borrowers with COVID-19-related hardships based on the evaluation of an incomplete application
 - enhance servicer communications to borrowers

Fair Lending & Equity

- “Millions of Americans face economic uncertainty and financial insecurity, are underemployed or unemployed, are at the brink of eviction or foreclosure, and are desperate for help. Of those struggling, people and communities of color have been disproportionately affected. ... Black and Hispanic homeowners are also less likely to access mortgage relief and forbearance, a troubling trend that the Bureau will continue to address.” (4/2021; CFPB Fair Lending Director Patrice Alexander Ficklin)
- April 2021 Fair Lending Report noted that “a number of ongoing and newly opened fair lending investigations” were ongoing.
 - July 15, 2020 enforcement action (N.D. Ill.) against a nonbank retail-mortgage creditor, alleging violations of ECOA and Regulation B. The Complaint alleges that the lender drew almost no applications for mortgages on properties in African American neighborhoods located in Chicago, and “illegally discouraged African American prospective applicants from applying for mortgage loans and engaged in illegal redlining.”
 - October 27, 2020 Consent Order with national bank regarding inaccurate HMDA data reporting during 2016-2017.
- **“In 2021 and beyond, the Bureau will place greater emphasis on fair lending and efforts to address racial equity for underserved communities, and will report on those efforts in 2022.”**

Student Loan Servicing

- A Chopra priority:
 - “Student loan companies should be helping borrowers ... by advising them on all of their options for managing their student debt. ...[A]ll too often, these companies steer borrowers in a direction that most benefits their bottom line. ... As the primary regulator of the student loan and debt collection industries, the CFPB must act to address these serious problems.” (9/2019 remarks)
 - “I saw firsthand how much influence and power that Wall Street and government contractors ... have over our student loan system. The Department ... had wide latitude to revoke subsidies and contracts after findings of legal violations, but the Department’s student loan arm went to great lengths to protect the status quo.” (9/2019 remarks)
 - “I am concerned that inadequate servicing has contributed to America’s growing student loan default problem. ...[S]olutions to promote affordability of student loans must consider the role of private student loans.” (6/2014 Remarks)

Small Dollar Lending

- “The CFPB is acutely aware of consumer harms in the small dollar lending market, and is particularly concerned with any lender’s business model that is dependent on consumers’ inability to repay their loans.” (3/21 CFPB Blog)
- “The Bureau ... will use the authority provided by Congress to address these harms, including through vigorous market monitoring, supervision, enforcement, and, if appropriate, rulemaking.” (3/21 CFPB Blog)
- “The Bureau continues to believe that ability to repay is an important underwriting standard. To the extent small dollar lenders’ business models continue to rely on consumers’ inability to repay, those practices cause harm that must be addressed by the CFPB.” (3/21 CFPB Blog)



Closing Thoughts and Next Steps



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