

President Biden's Nominee for CFPB Director Confirmed, Expected to Continue to Ramp up Enforcement

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Rohit Chopra was confirmed as Director of the Consumer Financial Protection Bureau (the "CFPB") following a 50-48 vote in the Senate on Thursday, September 30, 2021. Chopra's confirmation comes almost eight months after President Biden nominated the consumer advocate and former Federal Trade Commission ("FTC") Commissioner to lead the CFPB. A vote on Chopra's nomination was likely delayed due to fears among some Democrats that Republicans would be left with a majority on the FTC if Chopra was confirmed before President Biden's pick to replace Chopra at the FTC was appointed. In addition, Interim Bureau Director Dave Ueijio already has begun aggressively pursuing priorities similar to Chopra's. Chopra, known for working with Elizabeth Warren to create the CFPB and for his strong endorsement of harsher enforcement actions as FTC commissioner, is likely to continue the return of the CFPB to its Obama-era outlook on enforcement.

Prior CFPB Service. Chopra assisted Senator Warren in establishing the CFPB after its creation in 2010 under the Dodd-Frank Wall Street Reform and Consumer Protection Act. Chopra then served as Associate Director and Student Loan Ombudsman for the CFPB from 2011 to 2015.¹ In that role, Chopra focused on complaints from student loan borrowers regarding issues with lenders, servicers and debt collectors, including when attempting to obtain affordable payment plans.² Chopra also oversaw the CFPB's study of the student loan market and solicited information about abusive practices and consumer complaints in the private student loan industry from state agencies,

¹ Keith Goldberg, *Consumer Protection Agency Picks 8 Top Leader Posts*, LAW360 (Nov. 15, 2011, 9:07 PM), <https://www.law360.com/articles/286178/consumer-protection-agency-picks-8-top-leader-posts?copied=1>; Rohit Chopra, *Written Testimony of Rohit Chopra Before the Committee on the Budget*, CFPB (June 4, 2014), <https://www.consumerfinance.gov/about-us/newsroom/written-testimony-of-rohit-chopra-before-the-committee-on-the-budget/>.

² Evan Weinberger, *CFPB to Handle All Complaints Regarding Student Loans*, LAW360 (Mar. 5, 2012, 6:46 PM), <https://www.law360.com/articles/316038/cfpb-to-handle-all-complaints-regarding-student-loans?copied=1>; Evan Weinberger, *CFPB Solicits States' Beefs Over Private Student Loans*, LAW360 (June 13, 2012, 6:41 PM), <https://www.law360.com/articles/349938/cfpb-solicits-states-beefs-over-private-student-loans?copied=1>.

consumer rights advocates, universities and others.³ Chopra was a vocal critic and called for aggressive oversight of private lenders of high-interest loans who provided limited refinancing options.⁴ Chopra advocated for greater refinancing options for borrowers and supported congressional efforts to encourage major lenders to allow borrowers to refinance private student loans.⁵

During his time at the CFPB, Chopra identified industry practices that the Bureau considered problematic, including when private lenders placed paying borrowers in default when a co-signer filed for bankruptcy or died.⁶ Chopra also identified overcharges affecting military families, illicit lending practices by for-profit colleges and improper fee schemes.⁷ Chopra has compared aspects of the private student loan industry with the subprime mortgage crisis preceding the Great Recession of 2008 and called for reforms similar to those applied to mortgages and credit cards, including clear guidelines for payment applications and retention of records.⁸

After resigning from his position at the CFPB, Chopra became a Senior Fellow at the Center for American Progress, where he continued to focus on student loan debt issues. He subsequently served as Special Adviser to the Secretary of Education, Senior Fellow

³ Evan Weinberger, *CFPB Solicits States' Beefs Over Private Student Loans*, LAW360 (June 13, 2012, 6:41 PM), <https://www.law360.com/articles/349938/cfpb-solicits-states-beefs-over-private-student-loans?copied=1>.

⁴ AnnaMaria Andriotis & Alan Zibel, *CFPB Official Speaks Loudly on Student Loans*, WALL ST. J. (Dec. 3, 2014, 9:25 PM), <https://www.wsj.com/articles/cfpbs-ombudsman-speaks-loudly-on-student-loans-1417651649>; Brett Kitt, *CFPB Shines Spotlight on Education Lending Practices*, LAW360 (Mar. 12, 2014, 5:15 PM), <https://www.law360.com/articles/515989/cfpb-shines-spotlight-on-education-lending-practices?copied=1>.

⁵ Erica Teichert, *Sens. Push Banks to Refinance Private Student Loans*, LAW360 (June 25, 2013, 2:06 PM), <https://www.law360.com/articles/452725/sens-push-banks-to-refinance-private-student-loans?copied=1>; Danielle Douglas-Gabriel, *Consumer Watchdog Says Goodbye to Student Loan Pointman*, WASH. POST, (June 17, 2015, 4:37 PM), <https://www.washingtonpost.com/news/wonk/wp/2015/06/17/consumer-watchdog-says-goodbye-to-student-loan-pointman/>.

⁶ *Id.*

⁷ Brian Johnson, *Key Takeaways from Chopra's Nomination Hearing*, JD SUPRA (Mar. 8, 2021), <https://www.jdsupra.com/legalnews/key-takeaways-from-chopra-s-nomination-5013879/>; Allison Preiss, *Center for American Progress Welcomes Rohit Chopra as New Senior Fellow*, CTR. AM. PROGRESS (June 24, 2015), <https://www.americanprogress.org/press/release/2015/06/24/115933/release-center-for-american-progress-welcomes-rohit-chopra-as-new-senior-fellow/>; Harris Winsberg, *SCRA Compliance Is Now Under Closer Watch*, LAW360 (Oct. 2, 2013, 5:20 PM), <https://www.law360.com/articles/476913/scra-compliance-is-now-under-closer-watch?copied=1>.

⁸ Jillian Berman, *These Student Loans May Be Worse Than Subprime Mortgages*, MKT. WATCH (Sept. 15, 2015, 8:49 AM), <https://www.marketwatch.com/story/how-for-profit-college-loans-are-similar-to-subprime-mortgages-2015-09-11>; Evan Weinberger, *CFPB Looking to Tighten Rules for Student Loan Servicers*, LAW360 (Oct. 16, 2013, 7:09 PM), <https://www.law360.com/articles/480694/cfpb-looking-to-tighten-rules-for-student-loan-servicers?copied=1>.

at the Consumer Federation of America, and Visiting Fellow at the Roosevelt Institute before being nominated for FTC Commissioner in 2018.⁹

FTC Service. Chopra was sworn in as FTC Commissioner on May 2, 2018. Chopra expressed early on in his tenure that his priorities as FTC Commissioner would be to expose the ways in which digital marketplaces “engage in data surveillance,” “analyze how rules and regulations promote or impede the competitive process” and, more generally, free the marketplace of “anticompetitive lies and distortions.”

During Chopra’s tenure, the FTC ordered technology companies, large and small alike, to provide the FTC with information on their consumer data collection practices in an effort to understand how consumers might be targeted and categorized and whether children’s privacy rights are being properly considered. Chopra has also become known for his aggressive, outspoken stance on enforcement against companies that he believes engaged in abusive or deceptive practices. For example, after the FTC ordered Amazon to pay a hefty fine to settle claims that the company withheld tips from delivery drivers working for the company, Chopra issued a statement lambasting the company for cheating its delivery drivers to “pad its own bottom line.” Similarly, when AT&T settled allegations of deceptive consumer practices related to claims of data throttling, Chopra called the business practice a “bait and switch” scam.

Additionally, Chopra has called for more collaboration between financial regulators, including the CFPB, on debt collection and consumer protection issues and is likely to continue to promote interagency cooperation as Bureau Director.¹⁰

Future Enforcement. Chopra is expected to continue to aggressively ramp up enforcement by the CFPB in general, with particular focus on private student lending, mortgage lending, debt collection, credit reporting and payday loans. Indeed, CFPB examinations increased in recent months in anticipation of Chopra’s confirmation.¹¹ Chopra is also expected to focus on fair lending enforcement and the response by lenders, collectors and servicers during the ongoing COVID-19 pandemic.¹²

⁹ Alexander Tucciarone, *Roosevelt Institute Announces Rohit Chopra as Visiting Fellow*, ROOSEVELT INST. (Mar. 29, 2017), <https://rooseveltinstitute.org/2017/03/29/roosevelt-institute-announces-rohit-chopra-as-visiting-fellow/>.

¹⁰ Evan Weinberger, *CFPB Pick Chopra Expected to Quickly Expand Watchdog’s Reach*, BLOOMBERG L. (Jan. 21, 2021, 7:31 AM), <https://news.bloomberglaw.com/banking-law/cfpb-pick-chopra-expected-to-quickly-expand-watchdogs-reach>.

¹¹ Jeff Kearns & Hannah Levitt, *The CFPB’s New Team Has a Message for Banks: We’re Back*, BLOOMBERG (Mar. 23, 2021, 5:00 AM), <https://www.bloomberg.com/news/articles/2021-03-23/biden-s-cfpb-head-rohit-chopra-expected-to-be-tougher-than-trump-s-on-banks>.

¹² Evan Weinberger, *CFPB Pick Chopra Expected to Quickly Expand Watchdog’s Reach*, BLOOMBERG L. (Jan. 21, 2021, 7:31 AM), <https://news.bloomberglaw.com/banking-law/cfpb-pick-chopra-expected-to-quickly-expand-watchdogs-reach>.

During a confirmation hearing before the Senate Banking Committee earlier this year, Chopra presented remarks on the consumer credit and housing markets, including the effect of the pandemic on consumers and resulting defaults and repossessions; errors in credit reporting, loan servicing and debt collection; and racial inequities.¹³ Chopra also discussed the need to avoid a foreclosure crisis as COVID-19-related forbearances expire beginning this fall. Lastly, Chopra emphasized the need to focus on consumer privacy, especially with regard to the role of Big Tech in financial services and mass data collection.¹⁴

Chopra's expected stance on the CFPB's enforcement authority is a sharp change from the Trump Administration under Kathy Kraninger. Chopra has emphasized the need for recovering money for consumers and has said restitution will be a critical part of the Bureau's enforcement under his leadership. As FTC Commissioner, Chopra publicly called for harsher consequences for corporate wrongdoing, signaling higher penalties for financial institutions in CFPB enforcement actions in the coming years.¹⁵

Moreover, while the CFPB does not have a direct impact on a bank's prudential standing for purpose of the bank being an "eligible bank" (in the case of a national bank) or being considered "well-managed" for purposes of the parent's financial holding company status, an OCC Comptroller appointed by President Biden, for example, may be significantly informed by a CFPB enforcement action in establishing a bank's prudential rating. In such a case, Director Chopra and the CFPB's influence on the U.S. banking system may increase to an even greater extent in this administration.

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¹³ Brian Johnson, *Key Takeaways from Chopra's Nomination Hearing*, JD SUPRA (Mar. 8, 2021), <https://www.jdsupra.com/legalnews/key-takeaways-from-chopra-s-nomination-5013879/>.

¹⁴ *Id.*

¹⁵ Chris Arnold, *Biden's Financial Watchdogs Would Be Tougher Cops on the Beat*, NPR (Mar. 2, 2021, 6:03 PM), <https://www.npr.org/2021/03/02/972981169/bidens-financial-watchdogs-would-be-tougher-cops-on-the-beat>.



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