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What to Expect from Director Rohit Chopra's CFPB

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By: Erica Turret

President Biden has nominated Federal Trade Commission (FTC) Commissioner Rohit Chopra to serve as Director of the Consumer Financial Protection Bureau (CFPB). Commissioner Chopra served as the agency's Assistant Director and first Student Loan Ombudsman prior to his appointment to the FTC in 2018. The CFPB under his leadership will shift to the more aggressive posture of the Obama administration and return the agency to its consumer watchdog mission.[1] His vision is aligned with that of Senator Elizabeth Warren whom he helped to set up the agency after the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010.[2]

Because of the Supreme Court's decision in *Seila Law* holding that the President has the power to fire the CFPB Director, the CFPB more closely carries out the current administration's agenda than was intended in the Dodd-Frank Act which had sought to structure the bureau as an independent agency.[3] Thus, Commissioner Chopra, once in office, will be able to quickly chart the agency on a new, more muscular course.

Regulated entities can expect enforcement to ramp up as the agency reverses efforts by the Trump administration to reduce the agency's impact. CFPB enforcement activity decreased by 54 percent under the leadership of Trump appointees.[4] Focus areas for a reinvigorated CFPB are likely to include:

- **Student Loans:** Given his experience, a Director Chopra will make student debt a top priority with the goal of continuing the work he started as Ombudsman. The bureau will likely crack down on student loan servicers and lenders to ensure they follow the law and adequately serve student borrowers.[5] The CFPB will also likely resume Obama-era efforts to increase transparency in the student loan process and create additional resources for borrowers. In addition to increased enforcement actions, the CFPB will likely also create new regulations (including possible federal student-loan servicing guidelines) for the industry and step up its oversight and monitoring functions, closely collaborating with the Department of Education and state regulators. The CFPB is also likely to step up enforcement actions against for-profit colleges.[6]

- **COVID-19 Relief:** The CFPB may take a more forceful approach in enforcing the consumer protection provisions of the CARES Act and other federal relief legislation, such as the requirement to offer borrowers extended periods of mortgage and student loan repayment forbearance.[7] A more active CFPB will aggressively pursue violations and go after allegedly unfair debt collection practices.[8] Commissioner Chopra has pointed to inequities in the distribution of relief funds, highlighting the underrepresentation of small businesses among recipients. [9] This suggests that he will prioritize the CFPB's role in monitoring the implementation of federal stimulus legislation.

- **Fair Lending:** Regulation and enforcement that prioritizes equity issues is likely. In addition to being a focus area for the Biden administration, Commissioner Chopra has advocated for the use of disparate impact analysis to detect and work to eliminate discriminatory lending practices.[10] The CFPB's enforcement of the Equal Credit Opportunity Act to challenge discriminatory practices will likely increase.[11] Commissioner Chopra has highlighted the way in which mass data surveillance can be discriminatory and harm consumers, suggesting increased data collection efforts and agency action in this space.[12]

- **Credit Reporting and Data Protection:** While at the FTC, Commissioner Chopra has discussed the importance of credit reporting protections and has emphasized the role of the CFPB in supervising credit bureaus.[13] He has focused on the technology industry and frequently discusses online predatory practices that harm consumers[14], suggesting that these will be likely areas of focus for him at the CFPB.

- **Payday Lending:** The CFPB is likely to bring back former CFPB Director Richard Cordray's Small Dollar Rule which would have required lenders to determine whether borrowers would be able to repay their loans prior to granting them. There is current litigation regarding the 2020 rescission of the Rule, which the new CFPB could rely on to reconsider the rescission. The bureau is sure to increase enforcement actions in this area as well, against allegedly predatory or unfair lending in violation of the Dodd-Frank Act.

- **Large Financial Institutions:** A more muscular CFPB is more likely to bring actions against larger, more powerful institutions including the country's largest banks and lenders.[15] The bureau will also pursue larger penalties for violations. At the FTC, Commissioner Chopra has consistently advocated for stronger enforcement actions against large companies. During his tenure, he has voted against several FTC settlements with companies that he views as insufficient and too lax (particularly no dollar settlements) and has advocated for larger penalties for repeat

violators.[16] He emphasizes the dangers of monopolization and the power of large companies compared to small business and consumers.

Thus, regulated entities can expect increased activity from a CFPB led by Rohit Chopra. In addition to a return to the more aggressive enforcement posture of former Director Richard Cordray, who was appointed by President Obama, a Director Chopra will bring his own set of priorities to the bureau. The issue areas outlined here are likely to take center stage in this new era for the Consumer Financial Protection Bureau.

[1] Statement of Commissioner Rohit Chopra Regarding the 10th Anniversary of the Enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, (July 21, 2010).

[2] Senator Elizabeth Warren, (Jan. 18, 2020).

[3] *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 207 L. Ed. 2d 494 (2020).

[4] Consumer Carnage: How Federal Enforcement of Consumer-Protection Laws Has Declined Under Trump, Public Citizen, (Mar. 13, 2019).

[5] Written Testimony before the Committee on Budget, (June 4, 2014), Written Testimony of FTC Commissioner Rohit Chopra Before the US House of Representatives Committee on Financial Services

"Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices," (Sept. 26, 2019).

[6] Written Testimony of FTC Commissioner Rohit Chopra Before the US House of Representatives Committee on Financial Services "Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices," (Sept. 26, 2019).

[7] Richard Cordray, White Paper: Immediate Actions for CFPB to Address Covid-19 Crisis, (Apr. 6, 2020).

[8] Senators Elizabeth Warren and Sherrod Brown, Congress Must Provide Immediate Relief for Consumers. Here's How, (Apr. 21, 2020).

[9] Rohit Chopra, (Apr. 21, 2020).

[10] Comment Submitted by Rohit Chopra, Federal Trade Commission to the Department of Housing and Urban Development on the Disparate Impact Proposed Rulemaking, (posted on Oct. 17, 2019); Statement of Commissioner Rohit Chopra *In the Matter of Liberty Chevrolet, Inc. d/b/a Bronx Honda Commission* File No. 1623238, (May 27, 2020).

[11] Introductory Remarks of Commissioner Rohit Chopra, National Fair Housing Alliance 2020 National Conference, (Oct. 6, 2020).

[12] Rohit Chopra: Consumer Protection in an Age of Uncertainty Keynote Conversation (Day 2), (Mar. 22, 2019).

[13] *Id.*

[14] Written Testimony of FTC Commissioner Rohit Chopra before the US House of Representatives Committee on the Judiciary Subcommittee on Antitrust, Commercial, and Administrative Law Hearing on Online Platforms and Market Power, Part 3: The Role of Data and Privacy in Competition, (Oct. 18, 2019).

[15] Statement of Commissioner Rohit Chopra Regarding the 10th Anniversary of the Enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, (July 21, 2010) ; Rohit Chopra, (Mar. 6, 2020).

[16] Rohit Chopra: Consumer Protection in an Age of Uncertainty Keynote Conversation (Day 2), (Mar. 22, 2019); Rohit Chopra and Samuel A.A. Levine, *The Case for Resurrecting the FTC's Penalty Offense Authority*, (Nov. 3, 2020).

Related Attorneys

Erica Turret
Associate
eturret@jenner.com
+1 202 637 6383

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