

More Aggressive Consumer Financial Services Enforcement Expected

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Takeaways

- Redlining enforcement will be a significant priority for the CFPB, DOJ and other agencies.
- Loan servicers should expect increased scrutiny to prevent unnecessary defaults.
- Credit bureau reporting will be an area of focus.

As expected, 2021 brought an uptick in fair lending enforcement in the U.S., particularly by the Consumer Financial Protection Bureau (CFPB). As President Joe Biden's nominees for key agency positions settle into their roles and move to implement their policy agendas, more enforcement actions are likely in 2022. Actions alleging redlining and other types of mortgage lending discrimination will remain a significant priority. In addition, we expect increased enforcement in areas that have received less attention recently, including loan servicing, credit reporting, student loans and small business lending.

Key Appointees Foreshadow Significant Enforcement Activity

Several important administration officials are expected to play roles in expanding scrutiny of lending compliance:

- Rohit Chopra, the former member of the Federal Trade Commission, who was confirmed in September 2021 as director of the CFPB;
- Marcia Fudge, secretary of Housing and Urban Development; and
- Attorney General Merrick Garland.

One of Director Chopra's first moves after confirmation was to appoint Eric Halperin as assistant director for the Office of Enforcement. An Obama Justice Department veteran, Mr. Halperin is expected to intensify the CFPB's enforcement of the fair lending laws.

An important position overseeing lending practices remains vacant. President Biden's nominee for comptroller of the

currency (OCC), Saule Omarova, withdrew after criticism from banking groups and moderate Democrats.

Areas of Focus

This year, we expect enforcement to increase and expand into new areas:

- **Redlining.** Federal and state agencies have announced their intention to direct even greater attention to potential redlining issues. At an October 2021 press conference, the CFPB, Department of Justice (DOJ) and OCC announced a redlining settlement with a bank and the formation within the DOJ of a new Combatting Redlining Initiative as one part of an ongoing, government-wide effort. We expect that bank and non-bank lenders alike will face increasing scrutiny.
- **Loan servicing.** Federal agencies are expected to increase their focus on loan servicers, and in particular their adherence to consumer protections implemented to mitigate the effects of COVID-19. These agencies are likely to scrutinize whether servicers are being proactive, working with borrowers and responding to their inquiries, evaluating income fairly and seeking to prevent avoidable foreclosures and the other adverse actions.
- **Credit reporting.** A recent CFPB report concluded that credit bureau disputes are more common among Black and Hispanic borrowers. We expect federal agencies, based on this report, to approach credit bureau reporting not only from the perspective

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of unfair, deceptive or abusive acts or practices (UDAAP), but also through the lens of fair and equitable treatment: how lenders furnish information to credit bureaus, how lenders and credit bureaus respond to borrowers when they dispute entries and what impact these practices may have based on race, ethnicity or other bases.

- **Student lending and expansion of credit.** Federal agencies have initiated enforcement actions against student lenders in the past, and we expect a more sustained review of student lending and servicing practices in the next several years. Director Chopra has cited student lending as a critical area of focus, and the CFPB

has already taken one enforcement action, charging an institution with misrepresenting its product as an “income sharing” arrangement rather than a loan. The Bureau’s action suggests that it and other federal agencies will seek to expand the scope of acts and practices subject to federal consumer protection laws.

- **Small business lending.** The CFPB recently issued a proposed rule requiring financial institutions to collect and report data on small businesses’ credit applications, with an emphasis on businesses owned by women and minorities. We expect the availability of this data will lead to increased scrutiny of small business lending.

- **Machine learning / artificial intelligence.** Director Chopra has made clear his concerns about the increasingly important role of so called “Big Data” in loan underwriting. In testimony before the House Committee on Financial Services, Director Chopra asserted that “automation and algorithms” lead to “less transparency into how credit decisions are made,” and that “these practices can unwittingly reinforce biases and discrimination, undermining racial equity.” We expect enforcement actions from the CFPB aligned with the Director’s perspectives.