

# The progressives strike back: Biden nominates FTC Commissioner as CFPB Director

Blog post by Global Counsel USA President, Erin Caddell, 22 January 2021

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This week US President Joe Biden nominated Rohit Chopra, currently a Democratic commissioner with the Federal Trade Commission, as Director of the Consumer Financial Protection Bureau (CFPB), the lead US consumer-finance regulator, heralding a more activist period for the CFPB following the more business-friendly approach of the Trump era. Kathleen Kraninger, the Trump-appointed director, tendered her resignation at Biden's request upon his inauguration.

Biden's move was put in play by the Democrats' wins in both special Georgia Senate elections earlier this month, as well as a US Supreme Court decision last year that gave the US president the authority to terminate the CFPB director at will (previously, the director could only be terminated for cause). With a 50-50 Senate split able to be broken by Vice President Kamala Harris, Democrats will now have enough votes to confirm Chopra without any Republican backing. Republicans could potentially attempt to filibuster the nomination, but Democrats may be calculating that the schism within the GOP over whether to impeach Trump for his role in the riot at the US Capitol on January 6th may make Republican opposition to Chopra and other controversial Biden nominees less forceful. Though not discussed by his administration as of yet, we assume that Biden would consider using the Vacancies Act to install Chopra as interim CFPB Director if Republicans balk at giving him a quick nomination hearing. As he has already been confirmed the Senate for his current role as an FTC commissioner, Chopra could serve as interim CFPB director for up to 210 days under the Vacancies Act.

The Chopra nomination, along with that of Gary Gensler for SEC Chair, is also a sign that progressives are having an impact at securing nominees below the Cabinet level, though moderates, Biden confidants and Obama alumni dominated the top agency nominations and White House jobs announced thus far. Also this week, press reports emerged that law professors Mehrsa Baradaran and Michael Barr are emerging as top candidates to lead the OCC. Both are more on the liberal side of financial regulation, though neither is a radical.

Biden's decision was met with praise from groups such as the Progressive Change Campaign Committee, which called the move "a big win for consumers." Chopra previously served as the CFPB's Student Loan Ombudsmen during the Obama administration after helping to stand up the Bureau, which was established by the Dodd-Frank Act in 2010; Chopra also worked at the Department of Education on student-debt issues. After Trump was elected, Chopra served briefly as a fellow at the Consumer Federation of America, an influential, left-leaning consumer advocacy group, before joining the FTC as a commissioner in 2018. Among the issues on which Chopra worked most actively during his prior tenure with the CFPB have been student loans, debt collection and for-profit colleges and universities. Chopra [pushed](#) for the CFPB to update the agency's debt collection rules, and to take a more aggressive stance against student-loan servicers like Navient (ticker: NAVI) for alleged unfair treatment of borrowers. During Chopra's tenure as student loan ombudsman at the Bureau, the CFPB successfully sued for-profit colleges Corinthian and ITT Educational Services, both of which have subsequently been dissolved. The

CFPB last year finalised a long-running effort to update its rules on debt collection, a rulemaking process that began under the Obama administration and was finalised under the Trump administration (see Global Counsel's January 5th, 2021, note on this issue, "New US consumer debt collection regulations are a boon for larger players," [here](#)).

Chopra's top priorities as CFPB Director, be he acting or fully confirmed, will be to rebuild the supervisory and enforcement infrastructure of the Bureau, and working to revive an effort that began under President Barack Obama's administration to increase restrictions on payday lenders, and unwind the loosening of restrictions for that industry under Trump. Given the continued controversies surrounding Big Tech - Chopra took an active role at the FTC in pushing tougher regulation of the sector - regulation of consumer data will also surely be a big area of focus for Chopra. While resulting from an antitrust case, Chopra and other regulators surely took note of news earlier this month that Visa (ticker: V) would drop its proposed acquisition of privately held fintech Plaid, in part due to concerns about the prospective combination's use of consumer data.

We do not think that student loan debt cancellation will be a big priority of a Chopra CFPB, at least early in Biden's term. Chopra's prior role as student loan ombudsman of the Bureau under Obama-era director Richard Cordray certainly suggests he could (and shares of Navient fell as much as 5% the day after Chopra's appointment). It does not appear that student-loan reform will be an especially high priority for Education Secretary nominee Miguel Cardona - he has spent most of his career in K-12 education in Connecticut and will have a long list of tasks unwinding prior Secretary Betsy DeVos' actions in other areas. We think the Department of Education, not the Bureau, would have to take the lead in any debt-cancellation efforts, given that ED is the administrator of the federal student-loan program. That said, student loans will be certainly be included in the CFPB's reinvigorated enforcement efforts under Chopra.

Chopra is not an ideal progressive (he earned an MBA from Wharton and worked at McKinsey before entering government), but he has solid liberal credentials. While Biden's CFPB will certainly have its hands full with undoing much of the work of the Trump administration, make no mistake, Chopra and the advisors he will bring along to the CFPB will guide the agency in a much different direction than it has taken over the past four years.