



UNITED STATES SENATE COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS

FROM: Banking and Housing Committee Staff
TO: Banking and Housing LAs
DATE: October 27, 2021
SUBJECT: Hearing entitled “New Era for Consumer Protection: The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”

On **Thursday, October 28, 2021 at 10:00 a.m. in SD-538, Dirksen Senate Office Building and virtually via Webex**, the U.S. Senate Committee on Banking, Housing, and Urban Affairs will hold a virtual hearing entitled, “New Era for Consumer Protection: The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress.” The witness will be:

- **The Honorable Rohit Chopra**, Director, Consumer Financial Protection Bureau.

Pursuant to Section 1016 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Director Chopra will provide a report to the Committee on recent activities, rulemakings, supervisory actions, and other efforts undertaken by the Consumer Financial Protection Bureau (CFPB).

SECTION I CFPB BACKGROUND AND SEMI-ANNUAL REPORT

Background

Title X of the Dodd-Frank Act established the CFPB. The CFPB is an independent agency within the Federal Reserve System. The CFPB implements and enforces federal consumer financial laws. The CFPB has authority over consumer financial products and services such as deposit taking, mortgages, credit cards and other extensions of credit, loan servicing, check guaranteeing, collection of consumer report data, debt collection associated with consumer financial products and services, real estate settlement, money transmitting, financial data processing, and service providers.

The Dodd-Frank Act stipulates the CFPB’s supervisory, rulemaking, and enforcement authorities with respect to depository institutions and non-depository institutions. Specifically, the Dodd-Frank Act transferred from banking regulators to the CFPB primary consumer compliance supervisory, enforcement, and rulemaking authorities with respect to insured depository institutions or insured credit unions with more than \$10 billion in assets and their affiliates.

Meanwhile, prudential banking regulators retained their primary consumer protection supervisory and enforcement authorities over insured depository institutions or insured credit unions with \$10 billion or less in assets despite such depositories being subject to

rules issued by the CFPB.

The CFPB has regulatory authority over non-depository providers of consumer financial products and services, including providers of private student loans, payday loans, and entities that engage in mortgage-related activities, such as origination, brokerage, servicing, modification, and foreclosure relief. In addition, the CFPB has supervisory authority over non-depository financial institutions considered “larger participants,” as defined by the CFPB. The CFPB has designated “larger participants” in a number of different markets, including consumer debt collection, consumer reporting, student loan servicing, and international money transmitters. Non-depositories subject to regulation by the CFPB may be required to register with the CFPB; file reports and submit to examinations; and comply with other measures deemed appropriate.

The Dodd-Frank Act explicitly exempts certain non-depository institutions or activities from regulation by the CFPB, except to the extent they provide consumer financial products or services or are subject to enumerated consumer laws. Such entities include merchants, retailers, or sellers of non-financial goods and services; automobile dealers; real estate brokers or agents; manufactured home retailers and modular home retailers; accountants and tax preparers; persons practicing law; persons regulated by state insurance regulators or state securities commissions; employee benefit and compensation plans; and persons regulated by the Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), or Farm Credit Administration (FCA).¹

On January 21, 2021, President Biden appointed Dave Uejio to serve as the Acting Director of the CFPB.² On February 13, 2021, President Biden formally nominated Rohit Chopra to be Director of the CFPB for a term of five years.³ On September 30, 2021, Mr. Chopra was confirmed and on October 12, 2021, Mr. Chopra assumed office as CFPB Director.

Semiannual Report

On October 8, 2021, the CFPB issued its Semiannual Report to Congress, as required under the Dodd-Frank Act. The Report describes key activities and objectives at the CFPB during the period beginning on October 1, 2020 and ending March 31, 2021. Generally, the report delineates: (1) significant issues faced by consumers shopping for or obtaining consumer financial products or services, including the effects of the COVID-19 pandemic on consumer credit and insights from the CFPB’s Making Ends Meet Survey; (2) the previous year’s budget request justification; (3) significant rules and orders undertaken by and upcoming initiatives of the CFPB; (4) analysis of complaints received in the CFPB central complaint database; (5) public supervisory and enforcement activities; (6) actions taken regarding covered persons that are not credit unions or depository institutions; (7) significant actions taken by State attorneys general or State regulators regarding Federal consumer financial law; (8) efforts of the CFPB to fulfill its fair lending mission; and (9) efforts to increase workforce and contract diversity.⁴

¹ See 12 U.S.C. 5481 – 5553; <https://fas.org/sgp/crs/misc/R42572.pdf>; <https://fas.org/sgp/crs/misc/IF10031.pdf>.

² <https://www.consumerfinance.gov/about-us/the-bureau/acting-director/>.

³ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/13/nominations-sent-to-the-senate-2/>.

⁴ See https://files.consumerfinance.gov/f/documents/cfpb_semi-annual-report-spring-2021_2021-10.pdf.

Of note, the Semiannual Report to Congress has divided rulemakings into the following: significant rules; less significant rules; significant initiatives; plan for upcoming initiatives; and plan for upcoming rules.

SECTION II Rulemakings

Anti-Discrimination in Lending Includes Sexual Orientation Discrimination and Gender Identity Discrimination – On March 9, 2021, the CFPB issued an interpretive rule clarifying that anti-discrimination under the Equal Credit Opportunity Act (ECOA) and Regulation B, 12 CFR part 1002, includes discrimination on the basis of sexual orientation and gender identity.⁵ The CFPB issued the interpretive rule following the U.S. Supreme Court decision in *Bostock v. Clayton County, Georgia* (2020), which held that anti-discrimination components of Title VII of the Civil Rights Act of 1964 apply to sexual orientation and gender identity discrimination. The CFPB then sought public comments on July 28, 2020 regarding whether *Bostock* should affect the CFPB’s interpretation of the ECOA, and ultimately published this interpretive rule on the basis of many public comments received.

Mortgage Servicing Changes Due to COVID-19 Pandemic – On April 5, 2021, the CFPB announced a Notice of Proposed Rulemaking (NPRM) to amend Regulation X, 12 CFR 1024, and the Mortgage Servicing Rule provisions to integrate additional borrower protections for homeowners facing hardship in the wake of the COVID-19 pandemic.⁶ The CFPB asked that comments be submitted prior to May 11, 2021. The final rule, the 2021 Mortgage Servicing COVID-19 Rule (2021 Rule), was issued on June 28, 2021 and went into effect on August 31, 2021.⁷ The 2021 Rule temporarily enables (1) borrower protection for those facing COVID-19 related hardship to apply for loss mitigation prior to any foreclosure referral upon the termination of foreclosure moratoria; (2) servicers to consider incomplete loss mitigation applications by borrowers facing COVID-19 related hardship for loan modifications; (3) prompt information access for certain delinquent borrowers; and (4) timing requirements for servicers to renew reasonable diligence efforts to obtain complete loss mitigation applications. It will apply for one year until August 31, 2022.⁸

Effective Date of Debt Collection Rules – On April 7, 2021, the CFPB proposed a delay of the effective date of two debt collection rules issued under the Fair Debt Collection Practices Act (FDCPA) in order to provide more time for compliance, given difficulties stemming from the COVID-19 pandemic.⁹ The CFPB issued an NPRM to delay the effective date by 60 days, from November 30, 2021 to January 29, 2022. The two rules are titled Debt Collection Practices

⁵ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-clarifies-discrimination-by-lenders-on-basis-of-sexual-orientation-and-gender-identity-is-illegal/>.

⁶ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-mortgage-servicing-changes-to-prevent-wave-of-covid-19-foreclosures/>.

⁷ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-rules-to-facilitate-smooth-transition-as-federal-foreclosure-protections-expire/>.

⁸ See <https://www.regulations.gov/document/CFPB-2021-0006-0219>. See also

https://files.consumerfinance.gov/f/documents/cfpb_covid-mortgage-servicing_final-rule_2021-06.pdf.

⁹ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-delay-of-effective-date-for-recent-debt-collection-rules/>.

(Regulation F) and revise Regulation F, 12 CFR part 1006, which implements the FDCPA. The rules address (1) communications related to debt collection and prohibitions on harassment, false representations, and unfair practices in debt collection; and (2) debt collection disclosures, information debt collectors must provide when initiating collections communications, prohibitions on debt collectors' ability to threaten or bring legal action to collect a time-barred debt as well as a prohibition on debt collectors' ability to furnish information about debt to a consumer reporting agency prior to the collector contacting the consumer about the debt.¹⁰ On July 30, 2021, the CFPB announced that the two final rules under the FDCPA would not be delayed and would go into effect on November 30, 2021.¹¹

Eviction Moratorium – On April 19, 2021, the CFPB issued an interim final rule titled Debt Collection Practices in Connection with the Global COVID-19 Pandemic, which amends Regulation F, implementing the Fair Debt Collection Practices Act (FDCPA), to support the Centers for Disease Control and Prevention (CDC) eviction moratorium and ensure consumers are aware of protections under the moratorium.¹² The rule addresses requirements for debt collectors in relation to the eviction moratorium. Debt collectors are required to provide written notice to certain consumers under the eviction moratorium and are prohibited from misrepresenting consumers' ineligibility for protection under the moratorium.¹³ The interim final rule went into effect on May 3, 2021. The CDC eviction moratorium ended following a Supreme Court ruling on August 26, 2021.

Delay in Effectuating General Qualified Mortgage Final Rule – On April 27, 2021, the CFPB delayed the mandatory compliance date for the General Qualified Mortgage (QM) Rule under the Truth in Lending Act (Regulation Z): General QM Loan Definition final rule (General QM Final Rule) from July 1, 2021 to October 1, 2022.¹⁴ The General QM category of qualified mortgages in Regulation Z was amended under the General QM Final Rule by replacing the DTI-based definition with a limit based on loan pricing. The delay is intended to help ensure access to mortgage credit during the COVID-19 pandemic. The delay did not change the General QM loan definition, as revised in 2020. The CFPB has said it will decide whether it will reopen the QM rulemaking at a later date.¹⁵

Juneteenth and Residential Mortgage Closings – On August 5, 2021, the CFPB issued an interpretive rule on mortgage and disclosure timing requirements in response to the Juneteenth Federal holiday to assist the mortgage industry in considering whether June 19, 2021 would be treated as a Federal holiday or a business day to comply with time-sensitive borrower

¹⁰ See https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_nprm_2021-04.pdf.

¹¹ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-confirms-effective-date-for-debt-collection-final-rules/>.

¹² See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-rule-clarifies-tenants-can-hold-debt-collectors-accountable-for-illegal-evictions/>.

¹³ See https://files.consumerfinance.gov/f/documents/cfpb_debt_collection-practices-global-covid-19-pandemic_interim-final-rule_2021-04.pdf.

¹⁴ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-delays-mandatory-compliance-date-for-general-qualified-mortgage-final-rule/>.

¹⁵ See https://files.consumerfinance.gov/f/documents/cfpb_general-qm_mcd-delay_final-rule_2021-04.pdf.

protections.¹⁶ The interpretive rule, Truth in Lending (Regulation Z); Impact of the 2021 Juneteenth Holiday on Certain Closed-End Mortgage Requirements, provides guidance on Regulation Z timing requirements under TRID allowing creditors to consider Juneteenth a Federal holiday or a business day.¹⁷

Small Business Access to Credit – On September 1, 2021, the CFPB issued an NPRM inviting the public to comment on its proposal to implement the small business lending data collection requirements set forth in section 1071 of the Dodd-Frank Act (Section 1071). Section 1071 amended the ECOA to require that financial institutions collect and report to the Bureau certain data regarding certain business credit applications. Section 1071’s purposes are to facilitate enforcement of fair lending laws and to enable the identification of business and community development needs and opportunities for women-owned, minority-owned, and small businesses. The Bureau is proposing to add a new subpart B to Regulation B to implement Section 1071’s requirements.¹⁸

SECTION III Reports

Housing Insecurity and the COVID-19 Pandemic Report – On March 1, 2021, the CFPB issued a report summarizing data and research on the impact of the pandemic on the rental and mortgage market, especially on low income and minority households.¹⁹ Key findings include: (1) Black and Hispanic families are more than twice as likely to report being behind on housing payments than white families; (2) 2.1 million homeowners were 90+ days behind on payments and would experience severe financial hardship when collections resume; (3) 9% of renters reported they were likely to be evicted, with Black and Hispanic households more likely to report being at risk; and (4) 28% of manufactured home residents reported being behind on housing payments, as compared to 12% of single-family home residents and 18% of small-to-mid-sized multi-unit buildings residents.²⁰

FDCPA Report – On March 22, 2021, the CFPB released the 2020 annual report to Congress on the administration of the FDCPA, which outlines efforts by the CFPB and the Federal Trade Commission (FTC) to protect consumers, especially those who experienced COVID-19 pandemic related financial impacts.²¹ The report detailed efforts to stop unlawful debt collection practices and expand law enforcement efforts, consumer education and public outreach, and policy initiatives. The CFPB engaged in four public enforcement actions of alleged FDCPA violations in 2020, two of which have been resolved, and ordered nearly \$15.2 million in consumer redress and \$80,000 in civil monetary penalties, while two cases remain in litigation. Key CFPB

¹⁶ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-interpretive-rule-on-certain-mortgage-and-disclosure-timing-requirements-for-the-2021-juneteenth-federal-holiday/>.

¹⁷ See https://files.consumerfinance.gov/f/documents/cfpb_juneteenth-holiday_interpretive-rule_2021-08.pdf.

¹⁸ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-shine-new-light-on-small-businesses-access-to-credit/>.

¹⁹ See <https://www.consumerfinance.gov/about-us/newsroom/new-report-from-consumer-financial-protection-bureau-finds-over-11-million-families-at-risk-of-losing-housing/>.

²⁰ See generally https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf.

²¹ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-submits-2020-report-to-congress-on-the-administration-of-the-fair-debt-collection-practices-act/>.

accomplishments include: (1) identifying issues that raised the risk of consumer harm during the pandemic through supervisory Prioritized Assessments; (2) publishing content assisting consumers in navigating their finances through the pandemic, which has been accessed about 4.3 million times; (3) providing consumer debt collection educational materials, including “Ask CFPB” which logged 1.9 million page views; (4) releasing a report on servicemembers’ complaint data from 2019; (5) publishing information about debt collection related to student loans during the pandemic; and (4) publishing results of an online survey testing versions of disclosures to educate the public on time-barred debt and the CFPB’s final rules on debt collection.²²

Mortgage Borrowers During the COVID-19 Pandemic Report and Complaint Bulletin – On May 4, 2021, the CFPB released two reports titled “Characteristics of Mortgage Borrowers During the COVID-19 Pandemic” and “Complaint Bulletin” detailing how borrowers were affected by the COVID-19 pandemic and summarizing overall mortgage complaints submitted to the CFPB, respectively.²³ In the first report, which used data from the National Mortgage Database (NMDB), key findings included: (1) Black and Hispanic borrowers make up a significantly larger share of borrowers who were in forbearance or delinquent through March 2021; (2) loans with an LTV ratio above 60% were significantly larger for borrowers in forbearance or who were delinquent compared to those who were current; (3) loans reported in forbearance or as delinquent in March 2021 were more likely than current loans to be single-borrower loans and to have been 30+ days delinquent in February 2020; and (4) forbearance and delinquency were more common among Black or Hispanic borrowers, those with a higher LTV, or those who reported other payment difficulties.²⁴ In the second report, which reported on information provided during the consumer complaint process, key findings included: (1) the volume of overall mortgage complaints increased to over 3,400 complaints in March 2021, which was the greatest complaint volume in almost 3 years; (2) consumers reported communication issues related to forbearance plans and options available when the plans ended; (3) consumers described confusion with mandatory account notices; and (4) consumers reported long delays in loan modifications.²⁵

Manufactured Housing Financing Report – On May 27, 2021, the CFPB’s Offices of Research and Mortgage Markets published a report titled “Manufactured Housing Finance: New Insights from the Home Mortgage Disclosure Act Data” to provide an evidence-based perspective on the manufactured housing market, which is the largest source of unsubsidized affordable housing in the country.²⁶ The report utilizes HMDA data regarding loan-level information on pricing, underwriting, and applicant characteristics reported by financial institutions to provide insights into manufactured housing finance. Key findings include: (1) only 27% of manufactured home loan applications result in the loan being financed; (2) though mortgage rates fell in 2019, less

²² See generally https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2021.pdf.

²³ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-reports-detailing-mortgage-borrowers-continuing-covid-19-challenges/>.

²⁴ See https://files.consumerfinance.gov/f/documents/cfpb_characteristics-mortgage-borrowers-during-covid-19-pandemic_report_2021-05.pdf.

²⁵ See https://files.consumerfinance.gov/f/documents/cfpb_mortgage-forbearance-issues_complaint-bulletin_2021-05.pdf.

²⁶ See <https://www.consumerfinance.gov/about-us/newsroom/manufactured-housing-loan-borrowers-face-higher-interest-rates-risks-and-barriers-to-credit/>.

than 4% of chattel originations were for refinances; (3) lenders have adjusted their pricing in response to changes to the Home Ownership and Equity Protection Act (HOEPA) rule in 2014; (4) about 42% of manufactured housing loans are chattel loans secured by the home and not the land; (5) over 60% of borrowers own the land where the home is located, so they would be eligible for a mortgage loan for manufactured homes (MH mortgage), but 17% of these borrowers take out a chattel loan; (6) Hispanic, Black, American Indian and Alaska Native, and elderly borrowers are most likely to take out chattel loans as compared to other consumers; (7) landowners face meaningful tradeoffs between chattel loans and MH mortgages; (8) the manufactured home lending market is more concentrated than the site-built homes mortgage market; and (9) Texas, which has rich data on manufactured housing, has a significantly higher proportion of chattel lending than the U.S.²⁷

Mortgage Servicing COVID-19 Pandemic Response Metrics Report – On August 10, 2021, the CFPB’s Office of Supervision Policy published a report titled “Mortgage Servicing COVID-19 Pandemic Response Metrics: Observations from Data Reported by Sixteen Servicers” to identify areas of risk in the large mortgage servicers’ pandemic response.²⁸ The data focused on call center metrics, forbearance-related metrics, delinquency, and borrower profiles. Key findings include: (1) while many servicers managed an uptick in call volume without increasing average time to answer, handle times, or call abandonment rates, borrowers were still at risk of obtaining untimely assistance from some servicers; (2) delinquent forbearance exits increased substantially, which reflected a potential risk of harm to vulnerable borrowers despite borrower protections put in place in response to the COVID-19 pandemic; and (3) collecting, categorizing, and/or managing information about borrowers who have limited English proficiency (LEP) and information regarding race varied widely across servicers.²⁹

Home Mortgage Disclosure Act (HMDA) Data Report – On August 19, 2021, the CFPB released a new HMDA data report titled “Data Point: 2020 Mortgage Market Activity and Trends” providing an overview of residential mortgage lending in 2020.³⁰ Key findings include: (1) financial institutions reporting at least one closed-end record went down by 18.8% in 2020 as compared to 2019; (2) the total number of closed-end originations in 2020 increased by 65.2% in 2020, primarily due to an increase in the number of refinance loans; (3) open-end lines of credit originations excluding reverse mortgages in 2020 decreased by 16.6%; (4) loans secured by closed-end home-purchase loans for site-built, one-to-four family, first lien, principal-residence properties for Black borrowers as well as refinance loans for Asian borrowers increased in 2020; (5) Black and Hispanic white borrowers had lower median loan amounts, lower median credit scores, higher denial rates, and higher median interest rates and total loan costs as compared to non-Hispanic white and Asian borrowers; (6) home-purchase origination volume declined in April and May of 2020, likely due to the COVID-19 pandemic; and (6) the refinance boom in

²⁷ See https://files.consumerfinance.gov/f/documents/cfpb_manufactured-housing-finance-new-insights-hmda_report_2021-05.pdf.

²⁸ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-mortgage-servicers-pandemic-response-varies-significantly/>.

²⁹ See https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-covid-19-pandemic-response-metrics_report_2021-08.pdf.

³⁰ <https://www.consumerfinance.gov/about-us/newsroom/mortgage-refinance-loans-drove-an-increase-in-closed-end-originations-in-2020-new-cfpb-report-finds/>. See also https://files.consumerfinance.gov/f/documents/cfpb_2020-mortgage-market-activity-trends_report_2021-08.pdf.

2020 was an extension of trends from the second quarter of 2019.

Financial Conditions for Renters Related to COVID-19 Report – On September 17, 2021, the CFPB released a report titled “Financial Conditions for Renters Before and During the COVID-19 Pandemic” addressing financial conditions renters face as compared to homeowners in these conditions.³¹ The report relies on the CFPB’s Making Ends Meet survey alongside consumer credit data. Key findings include: (1) renters’ financial circumstances generally improved as much as or more than homeowners’; (2) renters’ financial conditions related closely to changes in public policy during the pandemic i.e. in response to stimulus payments and availability of federal unemployment benefits; and (3) some credit outcomes amongst renters who received certain support during the pandemic were more responsive to federal policy changes than those of other groups. The CFPB ultimately found that renters’ financial conditions are vulnerable to the end of supportive public policies, including additional unemployment benefits and student loan forbearance.

Consumer Complaints Throughout the Credit Cycle Research Brief – On September 23, 2021, the CFPB released a research brief titled “Consumer Complaint Research Brief” analyzing consumer complaint submission patterns based on demographic characteristics.³² The report relies on census tract-level consumer complaint data matched with U.S. Census 2019 American Community Survey (ACS) data, effectively comparing patterns among American communities over three years. Key findings include: (1) lower income census tracts and majority-minority census tracts correlate with submitting credit reporting and delinquent servicing complaints at a greater rate; (2) higher income census tracts correlate with submitting loan origination and performing servicing complaints at a greater rate; (3) an increase in loan originations complaints in 2020 was concentrated in higher income census tracts and those with fewer minorities; (4) census tracts with the highest share of white, non-Hispanic consumers submitted loan originations complaints at over twice the rate of census tracts with the highest share of Black consumers; (5) census tracts with the highest share of Black consumers submitted the most complaints per resident; and (6) census tracts with a median income between 80 to 120% of their metropolitan statistical area (MSA) or county median submitted fewer complaints than those with less than 80% of their MSA or county median and those with median incomes greater than 120% of their MSA or county median.

Consumer Credit Card Market Report to Congress – On September 29, 2021, the CFPB released its fifth biennial report to Congress on the consumer credit card market.³³ The report finds that market growth from the past few years has reversed course in 2020 and that the decline in credit card debt during the COVID-19 Crisis was unprecedented in speed and magnitude. Key findings include: (1) outstanding credit card balances grew in 2019 to a peak of \$926 billion, but reduced down to \$811 billion in the second quarter of 2020; (2) measures of credit card availability decreased in 2020 since growing continuously after the Great Recession; (3) all age groups are increasing their digital engagement through e-statement use and mobile app adoption;

³¹ See https://files.consumerfinance.gov/f/documents/cfpb_financial-conditions-for-renters_report_2021-09.pdf.

³² See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-consumer-complaint-submission-patterns-vary-by-demographic-characteristics-of-census-tract/>.

³³ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-declines-credit-card-debt-new-applications-increases-digital-engagement-2020/>.

(4) many consumers received relief on credit card debt from their providers during the pandemic, such that over 25 million consumer credit card accounts in \$68 billion of outstanding credit card debt entered relief programs in 2020; and (5) innovations to expand credit access grew in the number of offerings and users.

SECTION IV Judicial Developments

***Community Financial Services Association of America, Ltd., et al. v. CFPB* (W.D.Tx. Aug. 31, 2021)** – On August 31, 2021, the U.S. District Court for the Western District of Texas upheld the Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule (the 2017 Rule) which limited unfair, deceptive, or abusive practices by covered lenders.³⁴ As a result, compliance will become mandatory on June 13, 2022 according to the court’s order.

***Consumer Financial Protection Bureau v. LendUp Loans, LLC* (filed in N.D. Cal. Sept. 8, 2021)** – On September 8, 2021, the CFPB filed a lawsuit against LendUp Loans, LLC, alleging the lender violated a 2016 consent order.³⁵ The CFPB is seeking monetary restitution to consumers, monetary civil penalties, and injunctive relief wherein LendUp would be required to stop deceptive marketing.

***Consumer Financial Protection Bureau v. Credit Repair Cloud* (filed in C.D. Cal. Sept. 20, 2021)** – On September 20, 2021, the CFPB filed a lawsuit against Credit Repair Cloud, a software company based in California, alleging it provided assistance to illegal credit-repair businesses violating the Telemarketing Sales Rule and the Consumer Financial Protection Act of 2010 (CFPA).³⁶ The CFPB is seeking relief for consumers harmed by the practices, injunctive relief to stop the conduct, and monetary civil penalties.

***Consumer Financial Protection Bureau v. American Advisors Group* (filed in C.D. Cal. Oct. 8, 2021)** – On October 8, 2021, the CFPB filed a complaint and proposed consent order alleging that American Advisors Group (AAG) mislead consumers to take out reverse mortgages through inflated and deceptive home estimates in violation of the CFPA.³⁷ The CFPB is seeking injunctive relief to stop engaging in deceptive practices, monetary relief to consumers, and monetary civil penalties.

***Henderson v. The Source for Public Data, L.P.* (amicus brief filed in the Fourth Circuit Court of Appeals Oct. 14, 2021)** – On October 14, 2021, the CFPB filed an amicus curiae brief with the FTC and North Carolina Department of Justice in *Henderson v. The Source for Public Data, L.P.* pending in the Fourth Circuit Court of Appeals.³⁸ The case involves allegations that

³⁴ See <https://www.consumerfinance.gov/about-us/newsroom/statement-cfpb-acting-director-uejio-cfpb-victory-in-legal-challenge-to-payday-lending-rule-protections/>.

³⁵ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-lendup-loans-for-violating-2016-consent-order-and-deceiving-borrowers/>.

³⁶ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-software-company-that-helps-credit-repair-businesses-charge-illegal-fees/>.

³⁷ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-american-advisors-group-for-deceptively-marketing-reverse-mortgages-to-consumers/>.

³⁸ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-ftc-and-north-carolina-department-of-justice-file-amicus-brief-in-henderson-v-the-source-for-public-data-lp/>.

The Source for Public Data is a consumer reporting agency using the internet to obtain public records to put background check reports together for its customers. At the district level, the court found that the defendant was not liable for FCRA violations because it is a publisher and speaker of third-party information subject to protection under Section 230 of the Communications Decency Act (CDA). On appeal, the CFPB argues that Section 230 does not apply to the claims regarding the defendant's own reports, which would otherwise be covered by the FCRA.

***United States of America and CFPB v. Trustmark National Bank* (filed in W.D. Tenn. Oct. 22, 2021)** – On October 22, 2021, the CFPB and the Department of Justice (DOJ), along with the Office of the Comptroller of the Currency (OCC), filed a suit alleging that Trustmark discriminated against Black and Hispanic neighborhoods in marketing, offerings, and originations to consumers in the Memphis metropolitan area.³⁹ The settlement seeks to require Trustmark to begin a loan subsidy program of \$3.85 million for impacted neighborhoods, increase its lending presence, and abide by fair lending procedures. It also seeks civil monetary penalties, some of which will be credited toward a penalty collected by the OCC.

SECTION V Other Recent Developments

Rescinded Abusiveness Policy Statement – On March 11, 2021, the CFPB announced its rescission of its January 24, 2020 policy statement titled “Statement of Policy Regarding Prohibition on Abusive Acts or Practices.”⁴⁰ The CFPB found in application that the principles from the earlier policy statement did not provide clarity to regulated entities and did not align with the Bureau's supervision mandate. Instead, the CFPB expressed its intent to exercise its supervisory and enforcement authority to the full extent provided under the Dodd-Frank Act.

Request for Information on Use of Artificial Intelligence (AI) – On March 29, 2021, the CFPB, along with the Federal Reserve Board, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC), announced a request for information (RFI) from financial institutions, trade associations, consumer groups, and stakeholders on the use of AI by financial institutions.⁴¹ Specifically, the RFI sought comments about machine learning, appropriate governance and controls over AI, challenges in adopting AI, and whether clarification from the agencies would be helpful.

Rescinded Policy Statements – On March 31, 2021, the CFPB announced it was rescinding seven policy statements issued in 2020 that were intended to provide temporary flexibilities to financial institutions in consumer financial markets.⁴² The CFPB also rescinded its 2018 bulletin on supervisory communication to replace it with a revised bulletin detailing its use of matters requiring attention (MRAs) to convey supervisory expectations.

³⁹ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-doj-and-occ-take-action-against-trustmark-national-bank-for-deliberate-discrimination-against-black-and-hispanic-families/>.

⁴⁰ See <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-rescinds-abusiveness-policy-statement-to-better-protect-consumers/>.

⁴¹ See <https://www.consumerfinance.gov/about-us/newsroom/agencies-seek-wide-range-of-views-on-financial-institutions-use-of-artificial-intelligence/>.

⁴² See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-rescinds-series-of-policy-statements-to-ensure-industry-complies-with-consumer-protection-laws/>.

Compliance Bulletin for Mortgage Servicers – On April 1, 2021, the CFPB issued a Compliance Bulletin and Policy Guidance (Bulletin) on Supervision and Enforcement priorities regarding housing insecurity related to consumers who need loss mitigation assistance as foreclosure moratoriums and forbearances come to an end.⁴³ The CFPB will focus on how well servicers are: (1) proactive in contacting borrowers in forbearance so they have time to apply for help; (2) working with borrowers to ensure servicers have necessary information and documents to evaluate borrowers for assistance; (3) managing communications with borrowers with limited English proficiency and complying with the ECOA; (4) evaluating income fairly under the ECOA’s anti-discrimination protections; (5) handling inquiries promptly; and (6) preventing avoidable foreclosures under Regulation X and other federal and state restrictions.

County-Level Demographics of Consumer Complaints – On April 28, 2021, the CFPB issued a bulletin analyzing complaints based on county-level data from the U.S. Census 2019 American Community Survey.⁴⁴ Key findings include: (1) the CFPB received more complaints per capita from consumers living in predominantly minority counties in 2020; (2) consumers living in those counties submitted more complaints in nearly every product category for which the CFPB accepts complaints; and (3) complaints increased at a greater rate in predominantly minority counties compared to predominantly white, non-Hispanic counties from 2019 to 2020.⁴⁵ The CFPB will expand its demographic collection to include household size and income through enhancements on its complaint form.

COVID-19 Consumer Complaint Bulletin – On July 1, 2021, the CFPB released a complaint bulletin detailing consumer concerns related to the COVID-19 pandemic.⁴⁶ The bulletin compiled complaints related to federal actions to: (1) suspend monthly payments on federal student loans; (2) issue Economic Impact Payments (EIPs) to eligible households; and (3) issue an interim final rule supporting the CDC eviction moratorium. Key findings include: (1) federal student loan complaint volume decreased significantly upon suspension of payments, though borrowers reported issues with customer service and delays in receiving responses to their complaints; (2) customer service issues in student loan complaints reflect issues with servicers’ preparedness for borrowers resuming payments; (3) consumers were charged overdraft fees on checking accounts when funds advanced by financial institutions were reversed; and (4) renters submitted few complaints about third-party debt collectors or attorneys seeking to carry out an eviction, and rather reported issues with collections for past evictions or concerns about negative credit reporting.⁴⁷

⁴³ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-compliance-bulletin-warns-mortgage-servicers-unprepared-is-unacceptable/>. See also https://files.consumerfinance.gov/f/documents/cfpb_bulletin-2021-02_supervision-and-enforcement-priorities-regarding-housing_WHcae8E.pdf.

⁴⁴ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-consumer-complaint-bulletin-examines-county-level-demographic-data/>.

⁴⁵ See https://files.consumerfinance.gov/f/documents/cfpb_complaint-bulletin_county-level-demographic-overview-consumer-complaints_2021-04.pdf.

⁴⁶ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-consumer-complaint-bulletin-highlights-consumers-difficulties-during-pandemic/>.

⁴⁷ See https://files.consumerfinance.gov/f/documents/cfpb_covid-19-issues-described-consumer-complaints_complaint-bulletin_2021-07.pdf.

Rental Assistance Finder Launched Online – On July 28, 2021, the CFPB released an online tool to assist renters and landlords in applying for payment assistance for rent, utilities, and other expenses due to pandemic impacts.⁴⁸ The Rental Assistance Finder connects renters and landlords with state and local programs administering federal assistance funds.

Consent Order Against Income Share Agreement Provider – On September 7, 2021, the CFPB issued a consent order against Better Future Forward, Inc., an income share agreement (ISA) provider for misrepresentations that the ISAs were not loans and failure to comply with federal law regarding private student loans.⁴⁹ The order reinforces requirements on the ISA industry and requires Better Future Forward to provide disclosures to bring it back into compliance with federal law, eliminate prepayment penalties that were improperly imposed, and end misrepresenting its product to borrowers.

Consent Order Against JPay – On October 19, 2021, the CFPB issued a consent order against JPay, a prison financial services company, for violations of the CFPA in charging consumers fees to access their money on prepaid debt cards that they were forced to use and for violations of the Electronic Fund Transfer Act (EFPA) for requiring consumers to sign up for a JPay debit card to receive government benefits.⁵⁰ The order limits the fees JPay can charge on release cards prospectively and requires JPay to pay \$4 million in consumer redress and a \$2 million civil monetary penalty.

Orders for Information from Tech Companies – On October 21, 2021, the CFPB issued a series of orders to collect information on business and data practices of large tech companies operating payment systems.⁵¹ The information seeks to understand how the companies utilize and manage consumer data so that the Bureau can adequately supervise. The orders were issued under Section 1022(c)(4) of the CFPA.

SECTION VI Biography

The Honorable Rohit Chopra

Rohit Chopra has served as the Director of the Consumer Financial Protection Bureau since October 12, 2021.

Mr. Chopra previously served as an FTC Commissioner.

After the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Mr. Chopra joined the Department of the Treasury to launch the new Consumer Financial Protection Bureau (CFPB). He served as Assistant Director of the CFPB. The Secretary of the Treasury also

⁴⁸ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-online-tool-to-help-renters-and-landlords-access-federal-assistance/>.

⁴⁹ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-student-lender-for-misleading-borrowers-about-income-share-agreements/>.

⁵⁰ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-penalizes-jpay-for-siphoning-taxpayer-funded-benefits-intended-to-help-people-re-enter-society-after-incarceration/>.

⁵¹ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-tech-giants-to-turn-over-information-on-their-payment-system-plans/>.

appointed him to serve as the CFPB's Student Loan Ombudsman, a new position established in the financial reform law. He subsequently served as a Special Advisor at the Department of Education.

Prior to entering government, Mr. Chopra worked at McKinsey & Company, the global management consultancy. He holds a BA from Harvard University and an MBA from the Wharton School at the University of Pennsylvania. He was also the recipient of a Fulbright Fellowship.