



CFPB Bites of the Month - Q&A with Lucy Morris: Takeaways from 10 Years

June 17, 2021 | [Justin B. Hosie](#), [Eric L. Johnson](#) and [Lucy E. Morris](#)

Each month, we host a 30-minute [webinar](#) outlining the month's key announcements and takeaways from the Consumer Financial Protection Bureau (CFPB) for financial services providers to consider.

With July 21, 2021 marking the 10-year anniversary of the CFPB opening its doors, we invited our colleague and former CFPB Deputy Enforcement Director, Lucy Morris, to join us for a Q&A on our June Bites.

Justin: What was it like starting up the Bureau in 2010-11?

Lucy: It was truly a unique experience like no other I've had in my career, to build a federal government agency from scratch. I joined a month after Dodd-Frank was passed.

It was a combination of a start-up atmosphere, but within the constraints of federal government policies and procedures. When I joined, there were just a handful of people there at the time and we were working out of the basement of the Treasury Department. Some of my early colleagues included Peggy Twohig, the Associate Director for Supervision Policy who just announced her retirement after 10 years, and Nick Smyth, who now heads the mini-CFPB unit at the PA Attorney General.

Not long after I arrived, Elizabeth Warren joined to lead the implementation effort, and then she began to fill out the leadership team with people like Rich Cordray as the Enforcement Director and Rohit Chopra as the head of the Student Lending Markets Office.

In the first year, we spent endless hours analyzing the statute and deciding how the different functions - like Supervision, Enforcement, and Consumer Response - should work. The statute provided the framework, but we had to fill in the details, create the organizational structure, and hire a lot of people in a very short period of time. It was exhausting and rewarding at the same time. When we went "live," that's when I became a Deputy Enforcement Director.

Eric: How has the CFPB changed and/or remained the same in the last 10 years?

Lucy: In a lot of ways, it feels like it has come full circle from the Bureau's early years under Bureau Director Rich Cordray. As the Bureau's first Enforcement Director and then the first Bureau Director, Cordray prioritized aggressive law enforcement over the Bureau's other tools.

For example, early on, there were about a dozen cases against large banks relating to their marketing and sale of credit card add-on products, imposing hundreds of millions of dollars in consumer relief. He

also authorized dozens of cases using the then-new prohibition against abusive acts or practices, without clarifying the standard or its limits.

Then, under the Trump Administration, Director Kraninger took a more moderate approach to enforcement and instead prioritized tools like consumer education and the non-public supervisory process. She continued to file enforcement cases, but they often were on the fraud end of the spectrum and often had much lower dollar amounts for penalties and consumer redress. Unlike Cordray, Kraninger attempted to place policy limits around the abusiveness authority. She held a symposium and then issued a policy statement about how the Bureau would apply the abusiveness authority, applying a cost-benefit test.

Now, under the Biden Administration and Acting Director Uejio, the pendulum has swung back and enforcement is in the spotlight again. My colleagues and I with Hudson Cook's Government Practice Group are seeing this play out in real time. Enforcement attorneys have renewed vigor. We see a lot more Civil Investigative Demands (CIDs) demanding documents and data. In particular, more CIDs for investigational hearings, i.e., sworn testimony under oath. They are doing these hearings remotely, via WebEx, from their home offices, without the time and expense of traditional in-person hearings. The result is that they are compelling investigational hearings much more frequently because there's little cost to them and they can ask questions directly of company managers and executives, under oath.

Enforcement attorneys and managers are also taking a much harder stance on things like requests for time extensions and meetings with managers. For example, they are increasingly asking companies to toll any statute of limitations in exchange for extensions of time. And many investigations seem to be pursuing novel theories under their unfair, deceptive, or abusive acts or practices authority. In these ways, the Bureau has returned to its early days of hyper-aggressive enforcement activity.

The biggest change from 10 years ago comes from the Supreme Court's decision in *Seila Law*. The Bureau was created to be an independent agency whose Director could only be fired for cause. As a result of *Seila Law*, the Director now serves at the pleasure of the President and can be fired at will. What Congress created as an independent agency is now a political agency, meaning that we will continue to see wide pendulum swings with changes in administration. That's not good for the Bureau, and it's not good for industry. The only solution to this would be a legislative change, such as changing the Bureau's structure to that of a bi-partisan Commission like the Federal Trade Commission, but that seems highly unlikely in today's environment.

Eric: Where do you see the CFPB today?

Lucy: We're now about six months into the Biden Administration and there have been a lot of changes in a short period of time under CFPB Acting Director Dave Uejio.

Early on, the Acting Director issued a number of blog posts and other statements about how the Bureau would use all of its tools in a more expansive way. He also highlighted his priorities, which are relief for consumers facing hardship due to COVID-19 and the related economic crisis; and racial equity, including fair lending.

Today, the Bureau continues to ramp up its enforcement and other tools. For example, the Acting Director issued a blog post calling for attorneys interested in joining the CFPB, saying that the Bureau would "hold accountable companies that break the law." Reportedly, the Bureau is sifting through 1,400 applications for these positions.

The Acting Director also has rescinded Kraninger's Abusiveness Policy Statement and authorized new enforcement cases alleging abusiveness. For example, on April 13, the Bureau filed a lawsuit against an online debt-settlement company for allegedly steering consumers into high-cost loans offered by affiliated lenders. We can't glean a lot from some of the early cases of this administration, however, because these are from investigations that have been in the works for some time. The feeling I get is that the Acting Director is teeing up enforcement actions and rulemakings for Rohit Chopra once he is confirmed as Bureau Director.

There are also CFPB leadership vacancies that Chopra will be able to fill, such as Associate Director for Supervision, Enforcement, and Fair Lending (SEFL), Associate Director for Supervision Policy, and Associate Director for Enforcement.

Eric: Please give us your thoughts about Rohit Chopra

Lucy: I'm sure everyone knows the basics by now. He was part of the CFPB implementation team and led the Bureau's student lending office until 2015. He is currently an FTC Commissioner and has been waiting for the Biden Administration to fill FTC vacancies, after which he could be confirmed as the CFPB Director. Just this week, Lina Khan was confirmed as Chairman of the FTC. This means that, for now, the democrats control the FTC with a 3-2 split. When Chopra is confirmed as the CFPB Director, the FTC will once again have an evenly divided Commission with 2 democrats and 2 republicans, until the 5th spot can be filled. In the short term, I think they will keep Chopra in place at the FTC long enough to get certain priority cases voted out. But beyond that, the Khan confirmation has cleared the way for Chopra to leave the FTC soon and take charge of the CFPB, which I think could happen by the end of the month and certainly by July.

As CFPB Director, I expect Chopra to prioritize law enforcement over the Bureau's other tools and to be especially tough on wrongdoers. As an FTC Commissioner, he has written countless statements that strongly advocate for the FTC to do more to punish and deter wrongdoers, and get more money back to consumers. He has also advocated for suing individuals and other participants involved in illegal acts or practices, not just the consumer finance provider. Anyone that wants to know how Rohit thinks need only go to his FTC bio to see his many written statements and speeches.

I also expect Chopra to prioritize interagency coordination and partnerships with other agencies like the FTC and state AGs. Although the FTC's enforcement authority has been weakened by the Supreme Court, I expect him to coordinate closely with the FTC and support its efforts to get full relief for consumers.

I've talked a lot about enforcement, but I also expect Chopra to use the Bureau's other tools more expansively. I think he will seek to expand the Bureau's supervisory authority through larger participant rules, such as for the installment and online lending markets. And we will see more exam findings referred to enforcement.

From the RMR Division (Research Markets & Regulations), I expect more research reports, like the one that just came out about manufactured housing, and continued use of rulemaking in areas like mortgages, small business data collection, and debt collection.

Eric: What areas or industries do you think are ripe for enforcement under a Chopra-led CFPB?

Lucy: The CFPB has mentioned fair lending and racial equity multiple times this year, which includes applying the Equal Credit Opportunity Act to address disparate treatment and disparate impact of protected classes as well potentially using its unfairness authority to protect vulnerable populations even where the ECOA would not apply. I also expect the Bureau to use its UDAAP authority in various markets, including mortgages and auto finance, to pursue ability to pay issues and sales practices relating to voluntary protection products. Given the pandemic, mortgage servicing and COVID-19 economic impact will be a top priority. The Bureau just issued a compliance bulletin warning mortgage servicers to be prepared for an expected surge in homeowners needing help, to prevent avoidable foreclosures. In the debt collection space, I expect continued law enforcement and possible reconsideration of rules. And last but certainly not least, due in large part to the increase in consumer complaints to the Bureau in 2020, I expect continued focus on the credit reporting space, including creditors' furnishing and dispute handling practices.

Eric: What do you recommend that covered entities do now to prepare for a Chopra-led CFPB?

Lucy: My first recommendation is to keep your finger on the pulse of what the CFPB is focusing on, by reviewing consent orders and enforcement actions; supervisory highlights; consumer complaints; and research reports.

Second, it is always a best practice to review your company's Compliance Management System (CMS), policies, procedures, and practices and take steps now to fill any gaps. The Bureau expects company leadership to foster a culture of compliance and dedicate sufficient resources to compliance.

Third, prepare for the possibility of getting a Civil Investigative Demand.

Know that initial deadlines are tight. It pays to have experienced CFPB counsel on speed dial.

Lastly, consider a CFPB mock exam or readiness review to identify and correct issues before the Bureau comes knocking. The Bureau looks favorably on what it calls "responsible business conduct," which includes: self-assessment (self-monitoring or self-auditing); self-reporting (of likely violations); self-remediation; and cooperation.

Companies that take these steps will be well prepared when the Bureau comes knocking.

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