



Consumer Lending and CFPB Regulation in The Biden-Harris Era

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Agenda for Today's Webinar

01

The major legislative, regulatory and enforcement, and executive actions that are likely to be prioritized by the Biden-Harris administration

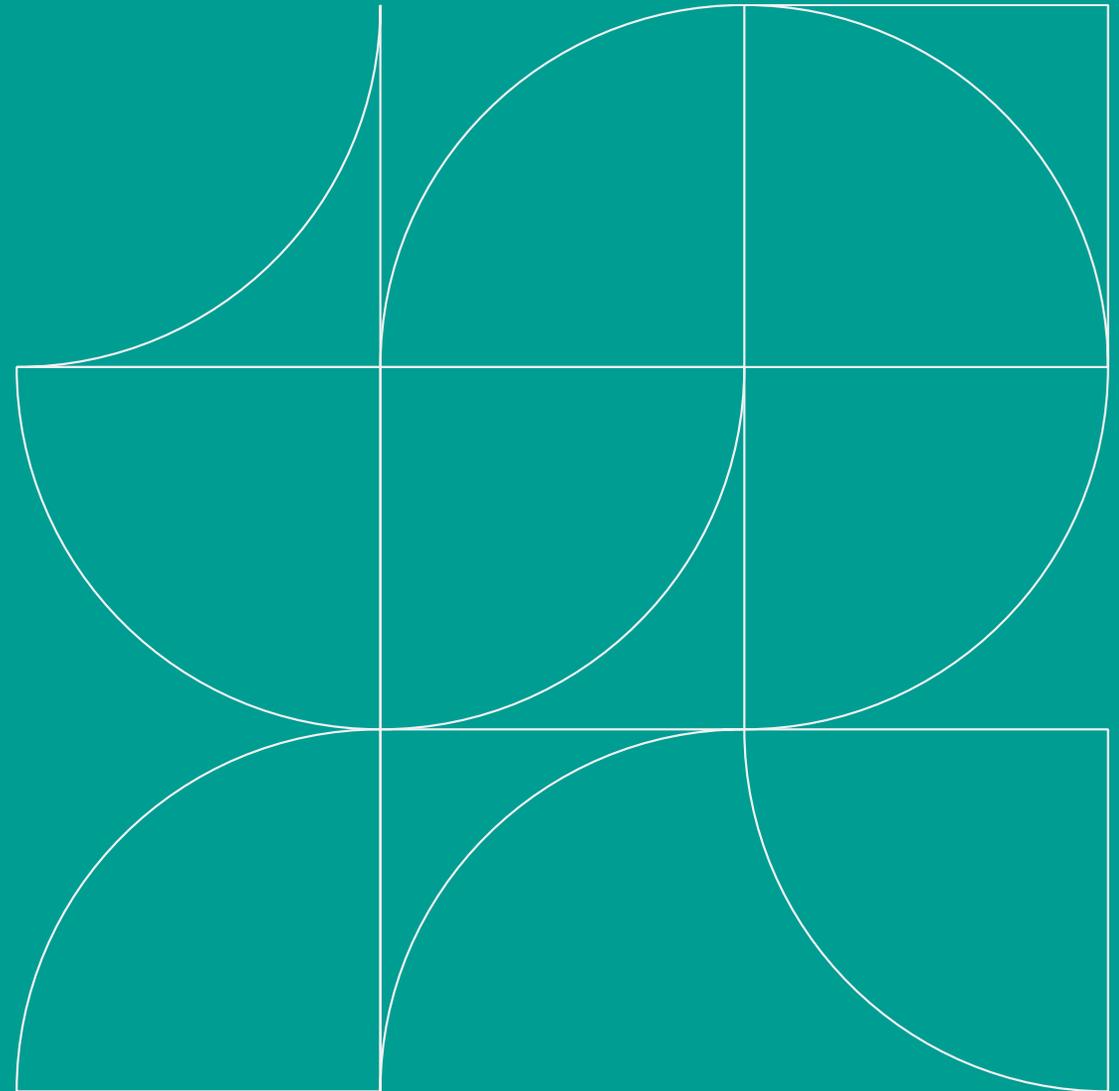
02

The Biden-Harris administration's financial regulatory agency appointments, including Chopra to head the CFPB, and their backgrounds, and expected platform for change

03

COVID-related impacts, including the status of the federal foreclosure and eviction moratoria

Major Legislative, Regulatory and Enforcement, and Executive Actions in the Biden-Harris Administration



Legislative Initiatives

- Continuing Impacts of the Coronavirus Aid, Relief, and Economic Security Act (**CARES Act**) -- key provisions:
 - Mortgage Forbearance
 - Foreclosure and Eviction Moratoria
 - Credit Reporting: the FCRA was amended by the CARES Act to require all consumer debt obligation payments impacted by COVID to be reported as “current” or otherwise as they stood pre-COVID

Legislative Initiatives

- House Budget Comm. advance of Biden-Harris Administration's \$1.9 Trillion stimulus package, ["American Rescue Plan"](#) -- not yet passed; highlights:
 - New stimulus direct payments to individuals earning less than \$75,000 a year and married couples earning less than \$150,000 of \$1,400 per person. Phases out and cuts off individuals earning more than \$100,000 and families earning more than \$200,000.
 - Additional \$19.1 Billion in rental assistance funds available to low income Americans who lost their jobs during the COVID-19 pandemic.
 - Additional \$5 Billion for help in paying renters' utility bills.

Regulatory and Enforcement

- CFPB Agenda
 - Supreme Court's 2020 Decision in *Seila Law v. CFPB* gave the President authority to change the Director of the CFPB at will -- no longer a fixed term with a dismissal for cause only standard likely to span different Administrations
 - Result was President Trump's CFPB Director -- Kathy Kraninger -- was immediately requested to resign upon Biden-Harris' Inauguration, and did
 - CFPB's Agenda under Director *Rohit Chopra* will more closely track the goals and initiatives of the new Biden-Harris Administration

Regulatory and Enforcement

- CFPB Agenda

- Likely Emphasis on Fair Lending Initiatives -- disparate impact lending on minority borrowers and consumers:

- mortgage origination
- mortgage servicing
- debt collection activities
- auto lending
- payday and short-term consumer lending

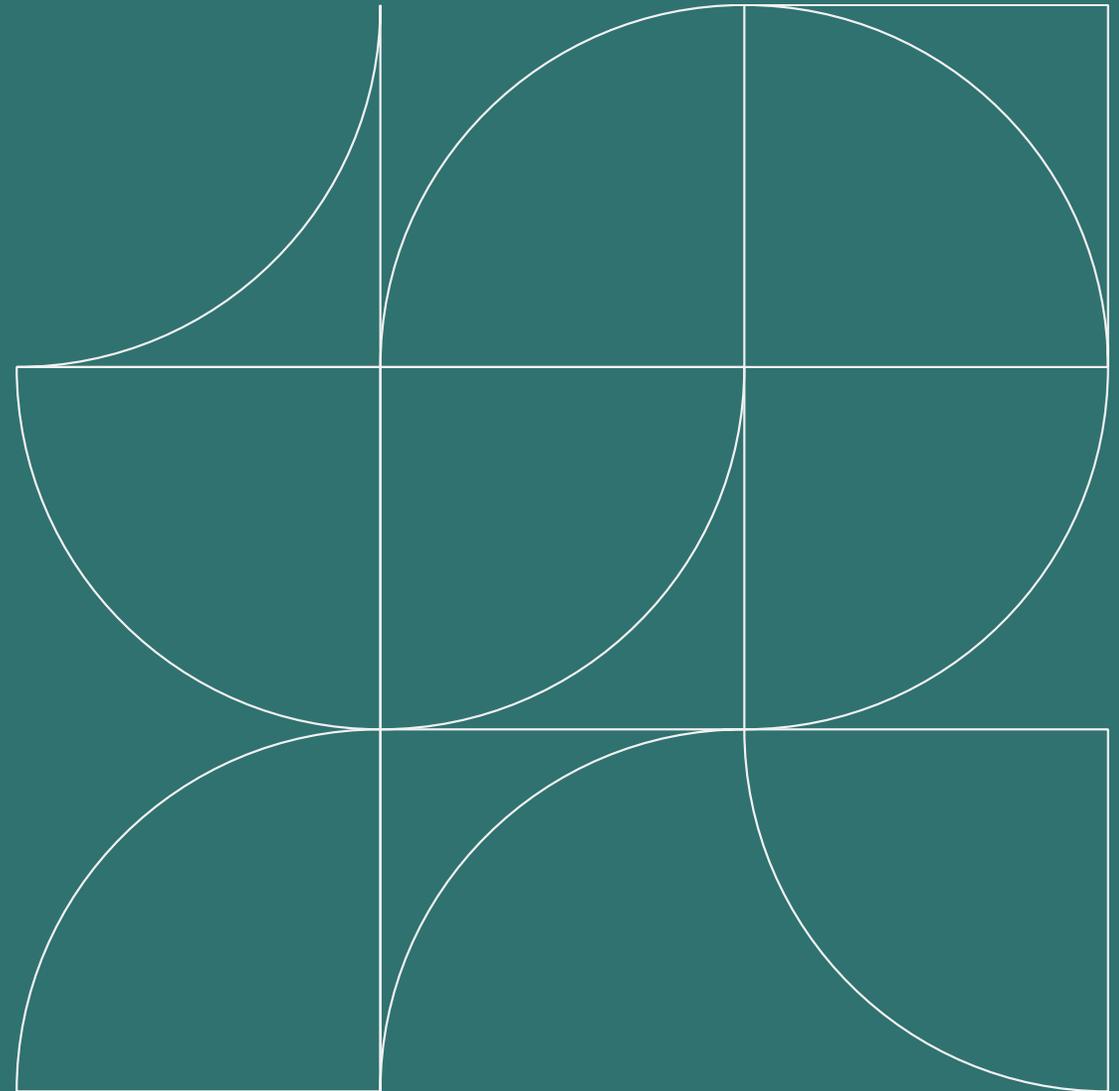
Regulatory and Enforcement

- CFPB ECOA Enforcement Actions under Regulation B
- Rescission of rescission of Payday Lending Underwriting Rule?
- Implementation or Amendment of Final FDCPA Rules?
- Outcome of OCC's "True Lender" Rule due to SDNY court challenge brought by New York, California and other states in January 2021 arguing that it is ultra vires?
- Fintech; TCPA; Student Lending; Credit & Prepaid Cards; Auto Lending??

Executive Actions

- Federal Student Loans: Automatic Forbearance under the CARES Act; Executive Order extended through at least September 2021
- Possible Federal Student Debt Cancellation of up to \$50,000
- Federal Student Loan Servicing: Payments made between March 2020 and September 2021 must be applied to principal

Biden-Harris Administration Financial Department Appointees



Biden-Harris Administration Financial Appointees

- CFPB Director **Rohit Chopra**
 - Not yet confirmed; Senate confirmation hearings have not started but nomination was submitted on Feb. 13, 2021
 - Currently holds Democratic seat as a Federal Trade Commission (FTC) Commissioner, appointed by President Trump in 2018
 - Unanimously confirmed by the Senate to his FTC Commissioner position in 2018 -- but not expected to sail through Senate confirmation this time
 - Harvard educated; Wharton MBA; consultant at McKinsey & Co.; formerly served as Director of Policy at the CFPB during the Obama Administration under Director Richard Cordray
 - Focus at the CFPB previously was on Student Debt Crisis and Payday Lending
 - Some controversial Dissenting Votes during his two years as an FTC Commissioner -- likely to get scrutiny during the Senate confirmation process from Republicans

Biden-Harris Administration Financial Appointees

- SEC Director **Gary Gensler**
 - Not yet confirmed; Senate confirmation hearings have not yet started
 - Veteran of prior Democratic Administrations: served as Assistant and Under-Secretary of the Treasury during the Clinton Administration; and as Chair of the Commodities Future Trading Commission during the Obama Administration
 - UPenn-Wharton undergrad & MBA; 18-year career at Goldman Sacks before entering Government service; has served as a Professor at the MIT Sloan School for the past 4 years

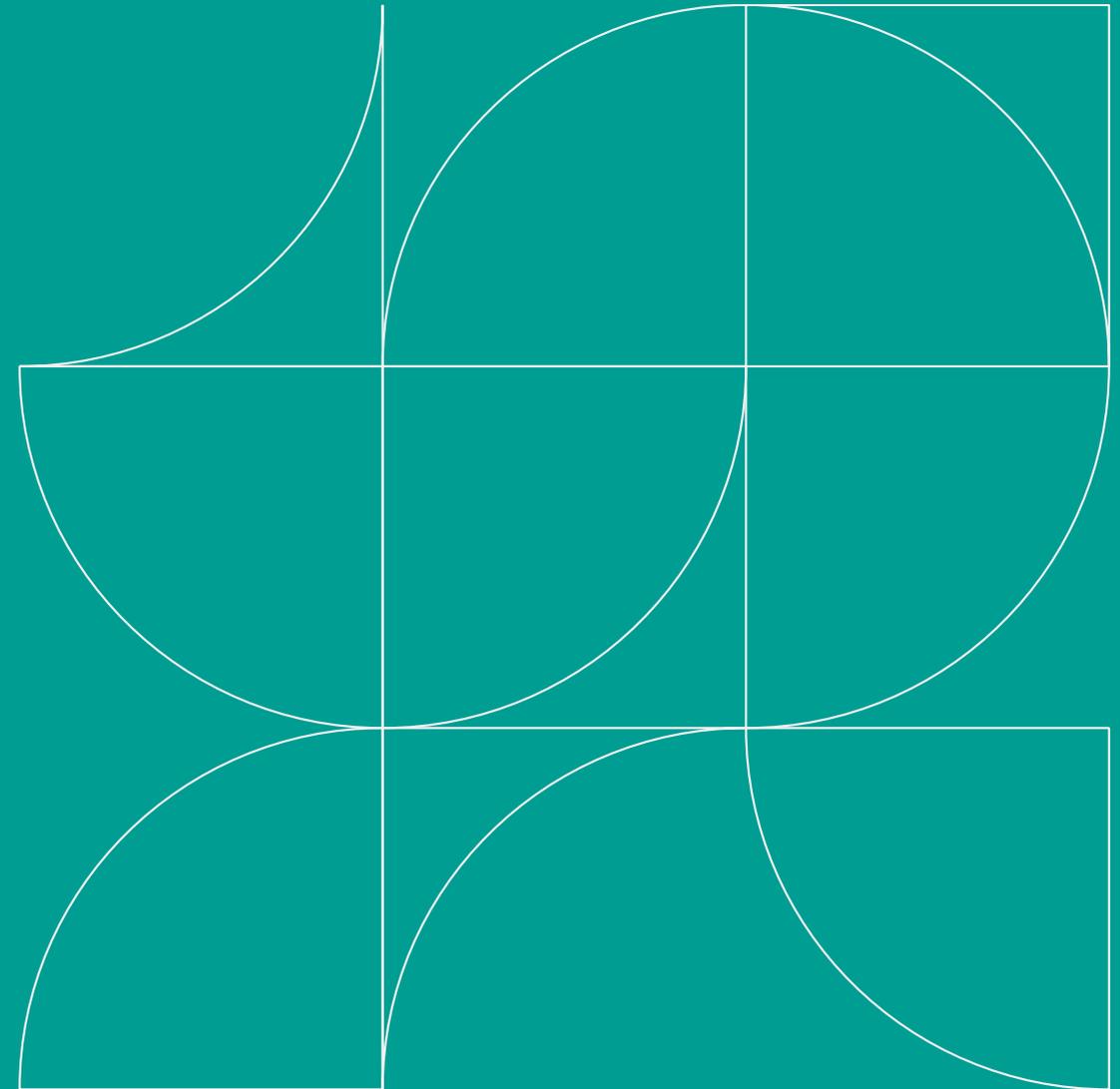
Biden-Harris Administration Financial Appointees

- Secretary of Treasury **Janet Yellin**
 - Senate confirmed her in a landslide vote (85 to 14) on January 25, 2021
 - Stellar academic credentials: summa cum laude graduate in Economics from Brown University; PhD in Economics from Yale University
 - Academic teaching career at Harvard; London School of Economics; UCal-Berkeley's Haas School of Business
 - Extensive prior Federal Government service:
 - Federal Reserve Board of Governors during the Clinton Administration;
 - Chairman of Clinton's Council of Economic Advisers;
 - President & CEO of the San Francisco Federal Reserve Bank; Vice Chair of the Federal Reserve Board of Governors in the Obama Administration; and then Chair of the Fed for 4 years until President Trump nominated Jerome Powell to succeed her in 2017.

Biden-Harris Administration Financial Appointees

- Takeaways:
 - Key Biden-Harris Financial Appointees are:
 - Smart
 - Experienced Heading Federal Regulatory Agencies in prior Democratic Administrations
 - Consumer-focused
 - Expected to be Aggressive – shake things up after Trump Administration

Status of Federal Foreclosure and Eviction Moratoria



Status of Federal Foreclosure and Eviction Moratoria

- Onset of COVID-19 emergency in March 2020 led to State & Federal Initiatives to ensure housing security during pandemic
- Need to check both State & Federal restrictions before proceeding
- Federal restrictions generally take precedence unless State moratoria are more restrictive

Status of Federal Foreclosure and Eviction Moratoria

- Federal Restrictions arise from several different sources:
 - Federal Centers for Disease Control -- Eviction Moratorium
 - GSEs through the Federal Housing Finance Agency (FHFA): Freddie-Mac & Fannie-Mae backed mortgages -- Foreclosure & Eviction (for REO properties) Moratoria
 - Department of Housing & Urban Development's Federal Housing Administration (FHA) Foreclosure and Eviction Moratoria for FHA-backed mortgages and REO properties

Status of Federal Foreclosure and Eviction Moratoria

- Recent Extensions at the end of the Trump Administration and with the Inauguration of Biden-Harris -- All of these Moratoria had been scheduled to expire by March 1, 2021:
 - In early February, Foreclosure Moratorium extended through March 31, 2021 for GSEs Fannie Mae and Freddie Mac, accomplished by:
 - Fannie Mae Lender Letter (LL-2021-02) dated 2/10/21 to All Servicers of its mortgages
 - Freddie Mac Guide Bulletin 2021-6 dated 2/10/21 supplementing its Servicing Guides for Servicers of its mortgages
 - GSE Foreclosure Moratoriums are expected to be further extended through June 30, 2021 per Biden-Harris Announcement on February 16, 2021
 - GSEs have already extended mortgage-payment Forbearance availability due to COVID-19 impacts through June 30, 2021

Status of Federal Foreclosure and Eviction Moratoria

- CDC Order extending Federal Eviction Moratorium from end of January through March 31, 2021 was announced on the date of the Biden-Harris Commencement, signed on January 29, 2021, and then published in the Federal Register
- Biden-Harris Administration announced on February 16, 2021 that the Federal Foreclosure Moratoria would be extended until the end of June 2021:
 - HUD
 - Department of Veteran's Affairs
 - Department of Agriculture
 - GSE's -- Amendments to Servicing Guides by Freddie Mac and Fannie Mae expected shortly

Status of Federal Foreclosure and Eviction Moratoria

- Foreclosure Moratorium -- what does it prevent?
 - Absent Exceptions, Cannot Initiate a Judicial or Non-Judicial Foreclosure of Single-family properties
 - Cannot Move for a Foreclosure Judgment or Order of Sale
 - Cannot Execute a Foreclosure Sale
 - Exceptions for Vacant or Abandoned Properties

Status of Federal Foreclosure and Eviction Moratoria

- Impact on the Mortgage Debt:
 - Mortgage Forbearances do not eliminate any portion of the Debt, both principal and accruing interest
 - Servicer is generally required to come to agreement with Mortgagor on treatment of missed payments; add to end of Mortgage?
 - Mortgagors and Servicers are still owed the full amount of the principal and interest -- Moratoria affect the timing of the default remedy of foreclosure
 - Foreclosure Moratoria will result in increasing numbers of mortgage loans in default status for longer time periods

Status of Federal Foreclosure and Eviction Moratoria

- Eviction Moratorium -- what does it prevent?
 - Absent Exceptions, Cannot Initiate or obtain a Judgment in an Eviction Proceeding with regard to COVID-impacted Tenants
 - Tenant required to complete a form and submit to Landlord certifying COVID-related impact
 - Does not Eliminate the requirement of Tenant to pay rent; but dramatically impacts the timing of default remedy to obtain possession of the premises and re-let the property to paying tenants
 - Rental and Mortgage payment assistance programs by Biden-Harris Administration

Thank You! Please contact us for more information.



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