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# In The CFPB Playbook: A Sprint To The Finish Line

By **Jehan Patterson and Eric Mogilnicki** (January 7, 2025, 5:19 PM EST)

*As the Consumer Financial Protection Bureau continues to expand its oversight of the financial services industry and b*eyond, staying abreast of its activity is more important than ever. In this Expert Analysis series, former *CFPB personnel provide recaps discussing the most noteworthy developments from each quarter.*

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A busy fourth quarter for the Consumer Financial Protection Bureau was never in doubt.

After all, the U.S. Supreme Court burst the constitutional cloud over the bureau's funding mechanism last spring with a 7-2 decision in favor of the bureau in CFPB v. Community Financial Services Association, paving the way for the dissolution of several injunctions the U.S. Court of Appeals for the Fifth Circuit had entered over the agency's rules.

The CFSA decision undoubtedly helped the bureau clear a backlog of enforcement actions after many commentators had observed the bureau's slower-than-typical pace for resolving enforcement actions.

Those cases, combined with the bureau's ambitious regulatory agenda and an administration operating on borrowed time following the results of the presidential election, means we can expect the current bureau to run nonstop until Jan. 20.

**Rulemaking**

Director Rohit Chopra has been as inventive in producing guidance as the innovators in consumer financial services with which the bureau is trying to keep pace. The bureau has eschewed the time, resources and public input associated with formal notice-and-comment rulemaking via its usage — and in some cases, invention — of many forms of guidance such as circulars, advisory opinions, policy statements, interpretive rules and amicus briefs.[1]

Absent formal rulemaking, all of this guidance is likely to be rescinded by a new director, just as Chopra rescinded the prior administration's policy statements and advisory opinions.

But the final quarter of the year has been marked by formal rulemaking activity that reflects Chopra's determination to subject nonbanks to the bureau's formal authority, to promote consumer choice in the financial services marketplace, to take aim at business models that rely on the sale of consumer financial data and to eliminate so-called junk fees.

Some of those efforts have been decried as the bureau overstepping its legal authority. But the rules, or elements of them, nonetheless might have staying power because they have popular appeal.

As such, they set up an early test of whether the Trump administration and its allies on Capitol Hill will embrace populism or the more traditional conservative aversion to government regulations. This is particularly true because the rules promulgated by the CFPB last quarter appear to be subject to disapproval by the new Congress and president under the Congressional Review Act.

In October, the bureau issued its long-awaited rule to implement the personal financial data rights accorded by Section 1033 of the Consumer Financial Protection Act.

The rule generally requires data providers to make available certain financial data to consumers or authorized third parties upon request at no charge to the consumer. The initial application of the rule applies to financial institutions offering accounts subject to the Electronic Funds Transfer Act and its implementing Regulation E, and to credit card issuers offering credit cards subject to the Truth in Lending Act and its implementing Regulation Z.

The bureau extended the first compliance date for the largest institutions by asset size to April 1, 2026, and exempted depository institutions with assets of $850 million or less from the rule entirely.

Characterized by the bureau as propelling the U.S. toward an open banking system, the rule is the subject of litigation — in the case of Forcht Bank NA v. CFPB in the U.S. District Court for the Eastern District of Kentucky — by banking trade groups seeking to strike it down on the basis that the bureau exceeded its statutory authority and was arbitrary and capricious in promulgating the rule.[2]

In November, the bureau finalized a rule to supervise the largest nonbank companies providing digital payments services. The rule authorizes the bureau to examine payments providers that conduct 50 million transactions or more annually and excludes digital asset transactions from its scope.

In December, the bureau proposed a rulemaking under the Fair Credit Reporting Act that, among other things, would provide that data brokers selling consumer credit, income or other financial information are consumer reporting agencies selling consumer reports; that communication of credit header data constitutes a consumer report if the information was collected for purposes of preparing a consumer report; and that a permissible purpose for which a consumer reporting agency may disclose a consumer report does not include marketing.

Here, too, at least some aspects of the proposed rule are likely to have popular appeal, and efforts to amend Regulation V, which implements the FCRA, could be continued by the next administration.

The bureau also issued a final rule that amends Regulation Z to provide that overdraft services provided by financial institutions with more than $10 billion in assets are finance charges subject to the disclosure requirements of the Truth in Lending Act, unless the overdraft is provided at or below costs and losses or otherwise capped at $5.

The rule also amends Regulation E to provide that financial institutions may not require preauthorized electronic fund transfers be used to repay fees for overdraft services provided by large financial institutions above the $10 billion asset threshold.

This Mississippi Bankers Association promptly challenged the rule in the U.S. District Court for the Southern District of Mississippi,[3] and the incoming administration will have decisions to make, in this court challenge and many others, about whether and how to defend a rule it did not issue.

**Enforcement**

From October through mid-December, the bureau's Office of Enforcement issued 10 public actions, a marked increase from the first quarter of 2024, which saw only one.[4]

Of note this last quarter, the bureau teamed with the U.S. Department of Justice in October to **issue** a proposed consent order against Fairway Independent Mortgage Corp. to resolve allegations that Fairway's residential mortgage lending business engaged in redlining practices in majority-Black areas in the Birmingham-Hoover, Alabama, Metropolitan Statistical Area.

It is likely one of the last enforcement actions under the DOJ's "Combating Redlining Initiative" that launched in 2021.[5] Fair lending enforcement was curtailed during the first Trump administration and is likely to be a lesser priority under new bureau leadership.[6]

The bureau also took aim at the practice of charging overdraft fees in connection with transactions where a consumer's available account balance had sufficient funds at the time of authorization but had insufficient funds at the time of settlement,[7] issuing a consent order against Navy Federal Credit Union.

Among other things, the credit union is barred from collecting overdraft fees in these instances and was ordered to pay $15 million in civil money penalties. This case echoes other enforcement actions brought by the CFPB under Chopra.[8]

The bureau also in October brought its first enforcement action against a Big Tech company, asserting that Apple Inc. committed unfair, deceptive and abusive acts or practices in violation of the Consumer Financial Protection Act in its role as a service provider to Goldman Sachs in the offering of a credit card product.

Here too, a populist Trump administration may decide to continue the current administration's scrutiny of the involvement of Big Tech in financial services.[9]

Several of the bureau's other enforcement actions last quarter were against relatively smaller nonbanks in connection with products targeted toward vulnerable consumers, such as students or persons who are incarcerated,[10] reminiscent of the types of cases that were a hallmark of former Director Kathleen Kraninger's tenure.[11]

These are the sorts of matters on which the Office of Enforcement is most likely to focus under new leadership. However, as during the first Trump administration, a new director is likely to first impose a pause on enforcement activity to determine which pending matters align with a change in priorities.[12]

**Supervision**

Consistent with Chopra's efforts to curtail the incursion of Big Tech into the digital payments space,[13] the bureau published in early December an order designating Google Payment Corp. for supervision[14] pursuant to what the bureau previously described as a "dormant" authority under Section 1024(a)(1)(C) of the Consumer Financial Protection Act.[15]

That statutory provision authorizes the bureau to supervise

any covered person who … the Bureau has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity for such covered person to respond, based on complaints collected through the system under section 5493(b)(3) of this title or information from other sources, that such covered person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.[16]

The order finds that Google's practices in investigating allegedly erroneous transactions and in preventing unauthorized transactions in connection with its Google Pay app and a related peer-to-peer payment platform poses risks to consumers.[17]

The findings mean that Google is subject to the bureau's supervisory authority, notwithstanding Google's discontinuation of the two payment products that form the basis of the bureau's order.[18] Google is challenging its supervisory designation in a lawsuit filed in federal court in the U.S. District Court for the District of Columbia.[19]

**Conclusion**

In sum, the bureau's fourth quarter of 2024 was an impressive demonstration of its ability to regulate, enforce and supervise.

However, cramming this work into its last months gives the new administration substantial opportunities to rescind or reverse many of Chopra's most recent accomplishments. And providers of consumer financial services will yet again have to adjust to a swing in the regulatory pendulum that has characterized the bureau's first 14 years.

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[1] Rohit Chopra, Rethinking the approach to regulations (June 17, 2022) https://www.consumerfinance.gov/about-us/blog/rethinking-the-approach-to-regulations/.

[2] See Forcht Bank, N.A. v. Consumer Financial Protection Bureau, 5:24-cv-00304-DCR (E.D. Ky. Oct. 22, 2024).

[3] See Mississippi Bankers Association v. Consumer Financial Protection Bureau, 3:24-cv-00792-CWR-LGI (S.D. Miss. Dec. 12, 2024).

[4] Evan Weinberger, CFPB Enforcement Actions Grind to a Halt as Supreme Court Looms, Bloomberg (Apr. 11, 2024), https://news.bloomberglaw.com/banking-law/cfpb-enforcement-actions-grind-to-a-halt-as-supreme-court-looms.

[5] Press Release, Justice Department Announces New Initiative to Combat Redlining (Oct. 22, 2021), https://www.justice.gov/opa/pr/justice-department-announces-new-initiative-combat-redlining.

[6] Renae Merle, Trump Administration Strips Consumer Watchdog Office of Enforcement Powers in Lending Discrimination Cases, Washington Post (Feb. 1, 2018), https://www.washingtonpost.com/news/business/wp/2018/02/01/trump-administration-strips-consumer-watchdog-office-of-enforcement-powers-against-financial-firms-in-lending-discrimination-cases/.

[7] See Supervisory Highlights Junk Fees Update Special Edition at 6-7, Consumer Financial Protection Bureau (October 2023), https://files.consumerfinance.gov/f/documents/cfpb_supervisory_highlights_junk_fees-update-special-ed_2023-09.pdf.

[8] See Consent Order, In re Wells Fargo Bank, N.A., File No. 2022-CFPB-0011, https://files.consumerfinance.gov/f/documents/cfpb_wells-fargo-na-2022_consent-order_2022-12.pdf; Consent Order, In re Regions Bank, File No. 2022-CFPB-0008, https://files.consumerfinance.gov/f/documents/cfpb_Regions_Bank-_Consent-Order_2022-09.pdf.

[9] John Hendel, The MAGA culture war comes for Silicon Valley, POLITICO (Dec. 12, 2024), https://www.politico.com/news/2024/12/12/trump-war-big-tech-00000205.

[10] See Consent Order, In the Matter of Performant Recovery, Inc., File No. 2024-CFPB-0016, at https://files.consumerfinance.gov/f/documents/cfpb_performant-recovery-inc-consent-order_12-2024.pdf; Consent Order, In the Matter of Global Tel Link Corp. d/b/a ViaPath Technologies, File No. 2024-CFPB-0015, at https://files.consumerfinance.gov/f/documents/cfpb_global-tel-link-corporation-consent-order_2024-11.pdf; Consumer Fin. Prot. Bureau v. Climb Credit, Inc., Case No. 1:24-cv-07868, Complaint (S.D.N.Y. Oct. 17, 2024) https://www.consumerfinance.gov/enforcement/actions/climb-credit-inc-et-al/.

[11] Evan Weinberger, CFPB Penalties Decline as Enforcement Actions Go Small, Bloomberg (Aug. 14, 2020), https://news.bloomberglaw.com/banking-law/cfpb-penalties-decline-as-enforcement-actions-go-small.

[12] Michael Ferullo, How Far Will Mulvaney Go in Scaling Back the CFPB?, Bloomberg (Dec. 13, 2017), https://news.bloomberglaw.com/banking-law/how-far-will-mulvaney-go-in-scaling-back-the-cfpb.

[13] Prepared Remarks of CFPB Director Rohit Chopra at the Brookings Institution Event on Payments in a Digital Century (Oct. 6, 2023), https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-at-the-brookings-institution-event-on-payments-in-a-digital-century/.

[14] Decision and Order (Public Version), In the Matter of Google Payment Corp., File No. 2024-CFPB-SUP-0001 (Nov. 8, 2024), https://files.consumerfinance.gov/f/documents/cfpb_Publication-Redacted-Decision-and-Order-Designating-Google-Payment-for-Su_6EZQyMz.pdf.

[15] Press Release, CFPB Invokes Dormant Authority to Examine Nonbank Companies Posing Risks to Consumers (Apr. 25, 2022), https://www.consumerfinance.gov/about-us/newsroom/cfpb-invokes-dormant-authority-to-examine-nonbank-companies-posing-risks-to-consumers/.

[16] 12 U.S.C. § 5514(a)(1)(C).

[17] In the Matter of Google Payment Corp. at 8, supra note 14.

[18] Id.

[19] Samantha Delouya, Google sues Consumer Financial Protection Bureau, CNN (Dec. 6, 2024), https://www.cnn.com/2024/12/06/business/google-pay-lawsuit-cfpb/index.html.