

Consumer Finance Monitor (Season 4, Episode 7): The Times at the CFPB are A-Changing: Perspectives on the CFPB Under Acting Director David Uejio and Director Rohit Chopra: Part I

Speakers: Alan Kaplinsky, Richard Cordray

Alan Kaplinsky:

Welcome to the Consumer Finance Monitor podcast, where we explore important new developments in the world of consumer financial services and what they mean for your business, your consumers, and the industry as a whole. I'm Alan Kaplinsky from Ballard Spahr. And I'm pleased to welcome you to this two-part podcast. That is largely a webinar that we very recently produced in which we featured Richard Cordray, the former director of the CFPB as our featured speaker. And there are various questions that I'm sure I will be asking Richard during the webinar. This webinar was about roughly an hour and a half in duration. And as a result, we decided to divide it into two parts for our podcast. One we're releasing today and another one that we're going to be releasing a week from Thursday. So we're going to go right into the webinar, the first part, which will feature Richard Cordray.

Alan Kaplinsky:

And next week it will mostly be Chris Willis, Heather Klein and John Culhane colleagues of mine at Ballard Spahr that you will be hearing from. Let me first mention, well, the idea for this webcast came when a lot of clients started contacting me and my colleague as soon as the election became final or official, not by Trump's standards, but by the rest of the world. And everybody wanted to know, all our clients were asking, first of all, who's going to be the next head of the CFPB. And what is that going to mean for our business? And for a few weeks, we played the game of guessing who that would be. And I must say that Rohit Chopra was right at top of my list. I had about three names that I thought were under consideration. So I was not at all surprised when Rohit became the nominee.

Alan Kaplinsky:

And then of course we're going to, until he gets confirmed by the Senate. And I will get into more detail about timing in a bit David Uejio, who has been at the CFP for quite a bit of a period of time during the Kraninger tenure, and also during Director Cordray's time in charge of the bureau. Not so many people knew about him. He didn't seem to interface that much least with the clients that we had or with us, we were dealing with other people at the bureau. So we're going to get into that, but let me first, let me introduce our speakers today. And of course we are really thrilled to have back as a speaker on one of our webcasts Rich Cordray. And of course, if there's ever anybody doesn't need any introduction, Rich, certainly you'd fall into that category.

Alan Kaplinsky:

But right now, Rich is the Jerome Lyle Rappaport distinguished visiting professor in law and public policy at my Alma mater Boston college law school. And before that Rich ran for governor, but most importantly, for purposes of our discussion today for several years that is from 2012 to 2017. Rich served as the first director of the CFPB. And I would be very remiss if I didn't put in a plug for Rich's book, which got published early last year. And the name of the book is called Watchdog. And you're going to be getting copies of our slides all of you. And if you go on the bio slide at the end, there will be a mention of Watchdog and a link to where you can purchase the book. It is fabulous Chronicle of Rich's tenure at the CFPB, including the enactment of Dodd-Frank, what led up to it and what Rich accomplished during his time at the bureau.

Alan Kaplinsky:

And I think for anybody who is going to be wondering, well, what is Rohit Chopra going to mean to the industry? I think you'd be remiss if you didn't read Rich's book while they're not the same individual bear in mind that Rohit worked at the CFPB for, I think a good part, but not the entire period of time because Rohit is now FTC commissioner, but he was there for a good period of time. Let me end to quickly introduce our other speakers, Heather Klein, Rich, will go first. We'll take questions today. If you type them into the Q&A box, we'll try to work them into our discussion. And after Rich will come, Heather Klein, Heather is a Consumer Financial Services Group associate works out of our Philadelphia office. And at one time when she was in law school, she worked as an intern at the CFPB under Rohit Chopra.

Alan Kaplinsky:

So Heather in fact is the person who introduced me to Rohit many years ago. And then I want to introduced John Culhane, John is a partner in our Consumer Financial Services Group. Has been with me for the entire period of time that I've been at Ballard Spahr and then even before that, needless to say we practiced a long time together. And then finally, Chris Willis, Chris is the co-chair of our Consumer Financial Services Group, a large part of Chris's practice involves enforcement work with various federal and state agencies and particularly the CFPB. And so we're going to begin with Rich. We'll probably have some questions for us, those of us at Ballard or any of you would have questions, type them in, and we'll try to work them in. And then we will go from there. So Rich, happy to turn the floor over to you.

Richard Cordray:

Hi, thank you Alan and I assure everyone it's sheer happenstance that I'm teaching at Allen's Alma mater, but it's a splendid place and the Boston college students are lively and they push you pretty hard. Let me just say, I will try to cover in fairly rapid order three things. I'll talk about the mechanics of transition. First of all, I'll spend a little time talking about Dave Uejio, who is the acting interim director of the CFPB right now. He's in that position now and active. And then I'll talk a bit about Rohit Chopra, the intended nominee to be the director of the bureau. And in the course of that, talk about the direction of the bureau, what I anticipate and what I think you can expect. And as Alan said behind me, you see my book with the CFPB green artwork on the cover, the canine protected theme Watchdog, which is about the CFPB, how we build it, what we were trying to accomplish.

Richard Cordray:

A lot of the fights we took on, and a lot of the goals that we set. And I do think that it's a fairly useful roadmap, but not just to what the CFPB was, but what it will be again, although no doubt, there are some new and different directions it will take under this new leadership. Let me talk first a little bit about the mechanics of transition. So since even before the election, there have been people working on at transition, although things never quite get underway in earnest. I'm sure people would disagree with me who were involved in that effort until the election is won because the top level people are focused on winning the election and they are a bit superstitious and also putting their full effort in accomplishing that. And they end up being a lot of this substantial decision-makers in the new administration.

Richard Cordray:

And that was true here as well, as soon as the election was over. And of course over is a relative term. In 2020, compared to many election cycles, there was a transition team appointed and notably there were two transition teams appointed for financial services by the Biden team. There was a transition team for financial service regulators that covered almost everyone, the Federal Reserve, the FDIC, the OCC, many others. And there was a separate and unique transition team for the CFPB in particular, which I think marks the importance of the CFPB to the Biden administration. I have said many times, Joe Biden has almost an innate connection with middle-class America. And he sees the CFPB as an important part of how to protect middle-class Americans against abuses in the financial marketplace and see that they're treated fairly. So it's not surprising that they've picked out the CFPB for sort of special status.

Richard Cordray:

The eight members of that transition team included six veterans of the CFPB people who work with me, they're headed by Leandra English, who was the deputy director of the CFPB while I was director for part of that time and has both operational and policy background. There was also a Bill Vitam, who was from the consumer advisory board, chaired that for two years under my leadership of the bureau. I know him well, and there was an eighth person who had not worked at the CFPB, but part of the progressive effort on consumer finance. So that was a transition team that was well-versed in what the CFPB had been. And obviously very attentive to what it had become under first Mick Mulvaney's interim leadership, and then Kathy Kraninger leadership.

Richard Cordray:

And of course, we had the clarification by the US Supreme court last June, that almost uniquely among the regulatory commissions in the federal government, most of which are multi-member the CFPB as a single member commission with the authorities that it enjoys was determined to be a commission whose leadership had to be removable by the president at will had to be under the direct control of the president, at least to that degree in order to comport with the constitution. And what that meant as a practical matter was that the current director, Kathy Kraninger was subject to being replaced by a new president or the former president at his discretion whenever they saw fit. And it was understood pretty clearly that if there was going to be a change of the administration here, there would be a new director of the CFPB and new leadership there.

Richard Cordray:

Interestingly, there was some ferment around the end of the year after the election, that this was more complicated than it might seem. That perhaps there has been a lawsuit. People will recall, perhaps when I left the bureau's leadership and Leander English as the deputy director at the time we thought was under the law, the person who would succeed me for a time, at least until they nominated and confirmed the new director, the Trump administration used the Federal Vacancies Act to appoint their own interim director, Mick Mulvaney and there was a lawsuit over that, which was resolved in favor of the Trump administration's maneuver. There was some argument that if the CFPB director were now to be fired, that the Vacancies Act was not subject to being used here.

Richard Cordray:

I never was clear that I agreed with that legal analysis. And in any event, it clearly couldn't create tenure in the acting director because the Supreme court had said there is no tenure in that position, whoever is leading the agency. So it could have led to a succession of firings, perhaps, but all of that kind of resolved itself in a fairly simple and straight forward way, because both the director and the deputy director of CFPB saw the writing on the wall, I think understood the legal regime, perhaps got a push behind the scenes for an invitation from the Biden administration. I don't know that one way or the other, but it wouldn't be surprising. The deputy director resigned the day before Joe Biden was inaugurated as president and Kathy Kraninger the director resigned on the day that he was actually inaugurated and took the oath and began serving as president. So that simplified matters enormously. Created vacancies in the two power positions at the bureau.

Richard Cordray:

At that point, there are various mechanics that can be used to address the succession at the bureau or any agency in the federal government. And they can defer the legalities of who can be put in a position and who can be nominated in differ depending on where the potential nominees or interim directors are coming from and where they're going to. It is not illegal apparently at least in some circumstances for someone to be acting as the director and be nominated to be the director of a Federal Agency. That was in fact what was happening with Brian Brooks as comptroller the currency. There's a little different organizational scheme for that position than for the CFPB, but that was happening with him. Neither he did not end up getting confirmed and he has now left and we will have a new comptroller, which is likely to be named fairly soon, but at CFPB it was determined.

Richard Cordray:

And this is generally better practice regardless of legal niceties, that there would be an acting director and there would separately be a nominee as director. And the reason that's generally better practice is that whoever's nominated to be the director. It often is better off if they're not already acting in the position, particularly if that can take some time, they start hearing the baggage of what's happening at the agency. That can affect their confirmation process, certainly muddy the waters. It's clearly a distraction. When I was nominated to be the head of the CFPB. Originally, I was at the CFPB, but I was not acting as the director. I was the enforcement chief, and we kept those lines very distinct for exactly that reason. That's in fact how the Biden administration chose to proceed here. They elevated an individual at the bureau who was one of the executives at the bureau head of the office of strategy, Dave Uejio to be the interim director.

Richard Cordray:

And they have separately announced their intent to nominate Rohit Chopra. Formerly of the bureau, who served there for a number of years, as Alan mentioned, and is really the national expert in student loans, among many other things. We'll get to that in a minute, who has now been serving on the Federal Trade Commission for the past two plus years as a Federal Trade Commissioner to be the next director of the CFPB. Now, a couple of things about that. Dave Uejio is somebody who's been at the bureau for quite some time. He has an operational background at the bureau originally. So he knows the building of the bureau was no easy task, but Watchdog talks about that in part. And Dave is familiar with the personnel side, the budgeting side, the operational side, the different challenges we have faced in surmounted over the years. So that's very helpful in somebody who's serving as an interim director, they don't have to introduce themselves to the place or become familiar with it.

Richard Cordray:

He is intimately familiar with the nuts and bolts of the organization but Dave also has been for some time, it was true under me. I first, I believe elevated him to the position, the head of the office of strategy bureau, which gives him a perspective on policy and the policy direction of the bureau as well. So Dave has a pretty comprehensive knowledge of what the bureau is doing and why and what its goals have been, and whether it's achieving those goals for quite some time. No doubt has views about how things went in a different direction under the leadership of Mick Mulvaney and Kathy Kraninger and has signaled very actively, even as interim director, that he will not simply be a caretaker, but he's trying to put the bureau back on the path that he thinks is the proper path more in line with the vision of the mission that we had when I was the director of the bureau, which was inspired initially, of course, by Elizabeth Warren, who served as the initial person in charge of helping set up the bureau, even before we opened our doors.

Richard Cordray:

And so that is something everybody can know about Dave and he's been transparent. He's published a couple of different memos to staff on the website in which he's indicated that the priorities right now are helping consumers deal with the challenges of the COVID economy, which is a new and different phenomenon that postdates the things I cover in my book, and also a dedication to the issues of racial equity and fairness in our society, which is one of the priorities for the new administration. And the bureau has much to say about that in terms of fair lending issues, in terms of financial inclusion issues, the unbanked, the credit invisibles, and the effects of some of the recent policies and economic developments on communities of color in this country. And I believe that those priorities that he has specified are very much in line with part of the agenda Rohit Chopra will come in to the bureau with. The other notable thing about the interim period is it's likely to be short. Rohit Chopra, I believe will be easily confirmed as the next head of the CFPB.

Richard Cordray:

He has a tremendous background, both academic and for a stint in the private sector. He worked with McKinsey. He has that kind of sophisticated financial training. He has been in public service for quite some time at the CFPB as the student loan ombudsman, which was an unusual position because it wasn't simply appointed by me as an employee of the bureau, but somebody that was jointly appointed and actually formally appointed by the treasury secretary. So Rohit had some reach across the federal government, but went beyond the CFPB. And of course, for the last few years, he served as Federal Trade

Commissioner. So and he was unanimously confirmed to his position on the FCC. So I don't anticipate there'll be any particular delays or issues about Rohit's confirmation. And so I think it's quite possible as I had said, publicly, that he will be nominated and confirmed by the end of February, or certainly by sometime in March.

Richard Cordray:

And so the interim period here will be shorter as opposed to in the past. There are times when it has gone on for quite some time. I recall and tell the story, the political story in my book of my own confirmation, which took almost exactly two years from the date of the first nomination to finally be resolved successfully in the Senate. Now, let me talk a little bit about Rohit and the direction of the bureau, and then I'll subside and let others have pickup of the torch here. Rohit is somebody who is very much aligned with the CFPB as it conducted itself under my leadership. And yet Rohit is his own person. He is a very creative and talented public servant. He will no doubt have his own thoughts about what the CFPB can and should be doing. Some of those will align with the things that we were doing before.

Richard Cordray:

Some of them will be brand new, and I'm excited to see what Rohit will bring to this position. Certainly one set of challenges that the bureau faces right now, which is postdate. Again, anything that I covered in my book is the COVID pandemic and the way it has yo-yo the economy first collapsing it last spring, then, especially under the effect of strong fiscal stimulus from the Congress, the economy recovering faster than many people had thought, but not entirely. And the recovery being very uneven. So that many consumers are still behind and in trouble. I and two of my former colleagues, Diane Thompson, who's now at the bureau again, as part of the new transition and Chris Peterson, we put out a white paper last summer identifying about 60 different areas we felt the consumer bureau needed to be attending to in the wake of the COVID pandemics effects on the economy.

Richard Cordray:

As best I can tell they did very little on any of those areas, but Dave has already signaled and I believe Rohit will be vigorous in pursuing ways the CFPB can help support and protect consumers during the ongoing economic difficulties that we're facing probably well into this year. And who knows how long that will go on as the trajectory is uncertain in part as we see whether more stimulus comes and how the recovery proceeds. so that's by way of some direction. Again, Rohit is an expert on student loans and you can certainly expect that to be a priority. And there may be congressional action on a certain amount of forgiveness of student loans. And I'm sure Rohit will have things to say about that, but his portfolio of the bureau went well beyond that. He is versed in all the policy issues, doesn't need to have a primer on any one of the markets that the bureau is dealing with.

Richard Cordray:

And as I said, he will be creative in his advocacy for consumers. The other thing you should know about Rohit that is perhaps peculiar to him is that he's especially good at building relationships and coordination across the different parts of the government. That is important for the CFPB. I have a whole chapter in my book called teaming up for consumers about how we pursued that as a goal and as a tool. Rohit was especially effective. He worked with the US Department of Education, the US Department of Treasury.

Richard Cordray:

He will understand how to grasp and wield the levers of coordination across the Federal Government and with the state, with the State Attorneys General and the state financial regulators as well. And I believe that to the extent those relationships have withered under the prior leadership, they will be re-invigorated again. And they will be an important part of why the consumer bureau will be influential and I believe successful under Rohit's tenure there. So I'll pause at this point. And I don't know if you want questions now, Alan, or whether they're going to come later, but that's some thoughts for your audience here. And again, if you want to get a sense of some of the likely direction of the bureau, my book Watchdog is a great primer on that, and it is available through Amazon and all the other platforms where you can buy books.

Alan Kaplinsky:

Yeah. I'm wondering if you have any thoughts on what position Rohit might take with respect to a couple of the rules that got changed, rules that you were very much involved in. I'm thinking small dollar lending, where do you think he'll... What direction will we go in there? Do you have a view on that?

Richard Cordray:

Yeah. And again, this is an issue that I cover in my book, and I think accurately predict that it has turned into a legal morass.

Alan Kaplinsky:

Yeah.

Richard Cordray:

But Rohit will be in a position to cut through that. Under my directorship, one of the last acts that I took was to make sure that the bureau adopted a rule on payday lending and vehicle title lending that would have reformed that market by making it a requirement that before offering such a loan, you had to make a reasonable assessment that the borrower would be able to repay the loan when due, without re-borrowing. And that is a natural feature of most lending markets, but it is not marked the payday lending market and it is the repeat re-borrowing the so-called death trap that has been so damaging to so many consumers, especially at these very high triple digit and often three, four, 500% interest rates.

Richard Cordray:

We'd put that rule in place, Mick Mulvaney tried to roll it back through the help of the courts, but he didn't make enough of a showing for the courts to do that. So they had to go back in and start a brand new rulemaking to rescind portions of that rule. They did manage to finalize that last summer, probably still subject to the Congressional Review Act, if there's going to be an effort to consider it under that provision, but at a minimum, I would be very surprised if the new bureau didn't seek to put back in place either the same or similar protections for consumers to reform the small dollar lending market. That would be a great surprise. Now, there were legal challenges to our rule from the industry. There are legal challenges pending to the new rule from consumer advocates, and those will have to be resolved as well, but certainly you can expect that to be part of the agenda in the early going for the bureau.

Alan Kaplinsky:

Yeah. And let me ask one other question, a subject near and dear to my heart and that is arbitration. Do think that the rule that you promulgated got overturned under the CRA, which means that the bureau while it can be regulated again in the arbitrationary it can't propagate. But it might be able to do all those things, do you think that Rohit will revisit arbitration?

Richard Cordray:

I think that, that is a high profile issue in the Congress right now. And by the way, Alan is not merely arbitration in the consumer financial market. It's arbitration across the board in lots of different markets, employment in the workplace, nursing home abuses many things. Arbitration clauses are blocking consumers and members of the public from being able to bring suits to assert their own rights. So there could be legislation on that. There could be an effort by the bureau and other regulators to address that as you noted, there are some legal perplexities with that, that'll need to be worked through. I'm not going to dig into the weeds and anticipate those, but I do think that there will be a serious and sustained effort for arbitration reform from either the Congress or the regulatory agencies, or perhaps both.

Alan Kaplinsky:

I want to thank Richard Cordray very much for taking the time to be with us today. And I'm looking forward now to making the second part of the webinar available next week to all of our podcasts listeners.