

FinTech Regulation Under the Biden Administration

Early Signs of Big Changes Coming

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Today's panelists



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FinTech Regulation by the SEC

The SEC's approach has softened over time; it's often sensible to approach the regulator regarding plans for new FinTech ventures.

- ▶ **Digital Assets:** Ledgers' decentralization forces SEC examination of years-old conduct to assert illegal securities offerings (Tether; Ripple).
 - NFTs – new innovation, but anything different?
- ▶ **Exchanges/DeFi:** Past SEC enforcement actions against onshore and offshore exchanges; same is likely with P2P/decentralized exchanges.

U.S. Digital Asset Regulation

- ▶ Largely dictated by existing securities laws; no new statutory law and minimal written guidance or rules.
- ▶ Most principles established through enforcement.
- ▶ Some cause for optimism due to successful exempt offerings, and new SEC leadership.
- ▶ Cryptocurrencies like Bitcoin and Ether are CFTC-regulated, and as-yet no nominee for leadership.

The SEC & FinTech under Biden

- ▶ Chairman-designate Gary Gensler is well versed in FinTech.
 - Former Chairman of CFTC, where he imposed regulation on previously unregulated spaces (swaps).
- ▶ Gensler seen as a progressive with a strong consumer protection streak, and is aggressive with enforcement.
- ▶ Clearly appreciates benefits of the FinTech revolution, but wants to ensure appropriate safeguards in place.

What's Next for the CFTC?

- ▶ The CFTC's has primacy in the cryptocurrency field.
 - Recent market manipulation enforcement action in the *McAfee* case demonstrates it is ramping up oversight efforts.
- ▶ LabCFTC is the agency's version of the SEC's FinHub – both intended to provide more approachable entrees for FinTech startups.
- ▶ No nominee yet for Chair, but promising rumors....

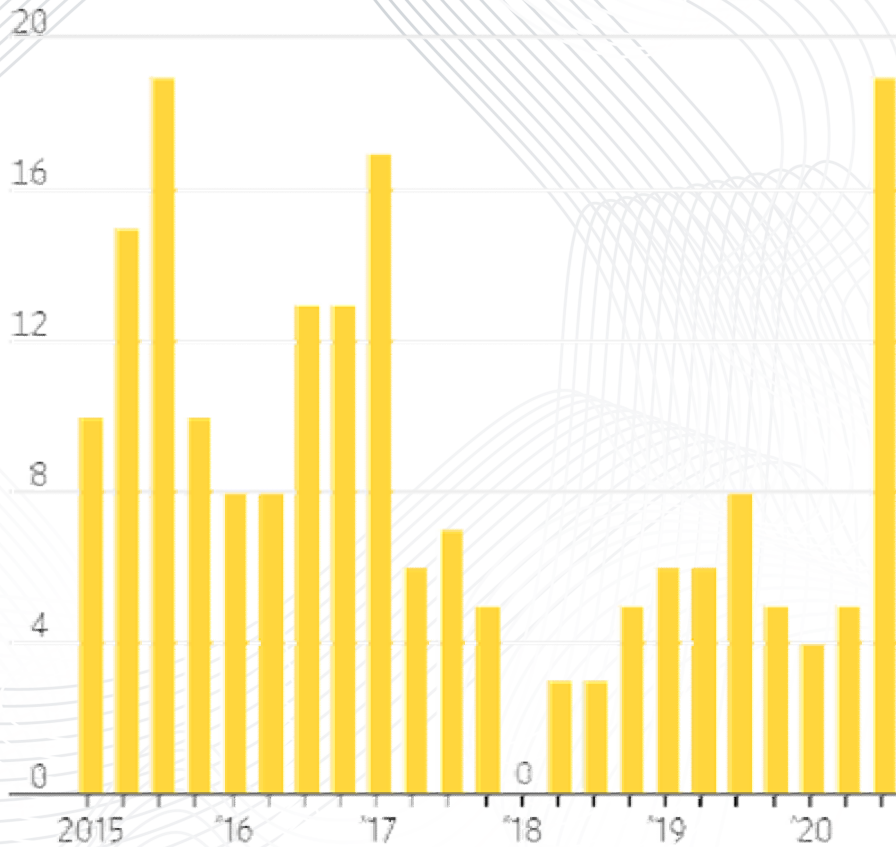
Biden's Impact – the CFPB, FBAs and States

- ▶ Big Picture
 - Racial Inequality, Diversity & Inclusion
 - Climate Change / Environmental Sustainability
- ▶ Federal Regulators
 - CFPB
 - OCC
 - FDIC
 - Federal Reserve
- ▶ State Regulators

Significant Change Expected at CFPB

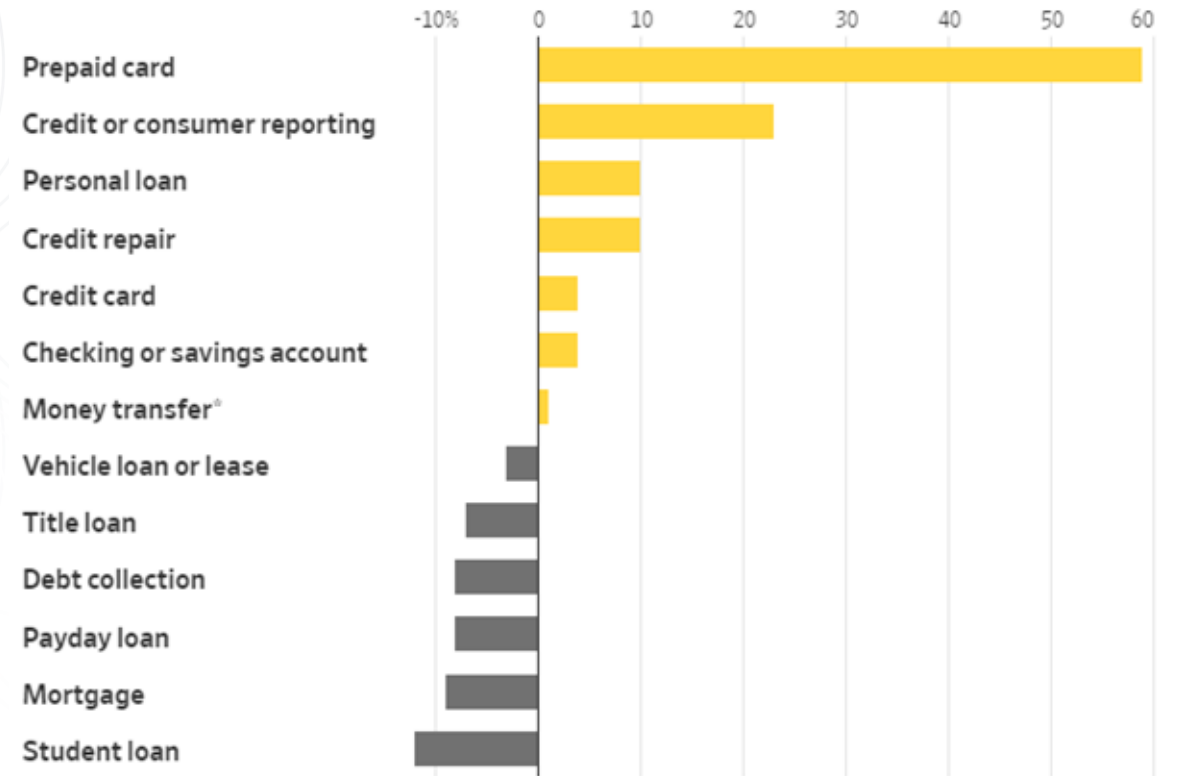
- ▶ Expect new director and structural reorganization
- ▶ **Rulemaking** likely to focus on diversity and anti-discrimination efforts, including algorithmic/AI bias
- ▶ Expanded **enforcement** – in fair lending, credit reporting, mortgage servicing and student lending. Dem. states will amplify efforts. See, e.g., Cal. DFPI)
- ▶ Will continue to promote innovation but will balance against consumer protection concerns

CFPB enforcement actions



Source: Consumer Financial Protection Bureau

Change in complaints to the CFPB between 2018 and 2019



*Or service, virtual currency
Source: Consumer Financial Protection Bureau

<https://www.wsj.com/articles/financial-firms-gear-up-for-biden-and-an-emboldened-consumer-watchdog-11603272600>

Biden's impact on federal banking agencies

- ▶ Rollbacks and modifications on rulemakings, like the OCC's last-minute Fair Access to Financial Services Rule and its controversial True Lender Rule
- ▶ Promotion of special-purpose charters or repurposing of old charter types FinTechs will be balanced interests in oversight
 - Liberalization accelerated under Trump-era OCC and FDIC
- ▶ Continued focus on faster payments

Open Questions from Regulatory Perspective

- ▶ What rollbacks and modifications of Trump-era measures may still be coming?
- ▶ What themes will drive regulation under the Biden administration?
 - Customer protection / UDAP? Safety / Soundness? Competition?
 - Will there be differential effect of this focus between new versus legacy entities?
 - Will any changes affect the innovations that have thrived recently – like sponsor banking that has enabled broader offerings?
- ▶ Likely effects on US FinTech position versus other nations?

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This document provides a general summary only and is not intended to be comprehensive. Specific legal advice should always be sought in relation to the particular facts of a given situation

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