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Obama Administration Issues a Fintech Policy Whitepaper

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On January 13, 2017, the National Economic Council published a whitepaper¹ that articulates the Obama Administration's perspective on and vision for FinTech.² The whitepaper builds upon the June 2016 White House FinTech Summit, where Cabinet secretaries and senior officials from across the Obama Administration engaged with stakeholders about the potential for FinTech to advance multiple policy goals, including small business access to capital, financial inclusion and health, domestic growth, and international development. The whitepaper highlights how the U.S. remains the global leader in FinTech as measured by total investments, but that the U.S. government needs to continue to develop a FinTech policy strategy that appropriately balances advancements in the sector, consumer protection, economic growth, and other policy outcomes.

The whitepaper first provides an overview of the Obama Administration's efforts to increase opportunities for entrepreneurs and establish "forward-leaning" initiatives to promote entrepreneurship and responsible innovation in financial services. In the context of summarizing those efforts, the whitepaper sets forth certain Obama Administration policy objectives that "reflect widely-shared values and practical expectations for the financial services sector and the U.S. government entities that interact with the sector." These include:

- **Foster positive financial services innovation and entrepreneurship;**
- **Promote safe, affordable, and fair access to capital;**
- **Strengthen financial inclusion and health in the United States and abroad;**
- **Address financial stability risks;**
- **Further a 21st century financial regulatory framework; and**
- **Maintain national competitiveness.**

The whitepaper then provides the following 10 overarching principles that the Obama Administration views as constituting a framework policymakers and regulators can use to further refine their approach to FinTech:

- **Think broadly about the financial ecosystem:** Incumbent institutions and new entrants alike will need to work to ensure that their offerings add value for consumers, investors, and markets, and do so in a manner that is safe, transparent, and sustainable. At the same time, government actors "should view their role as helping to create a thriving, sustainable financial services sector that includes new innovations and helps further other policy objectives."
- **Start with the consumer in mind:** As the FinTech industry continues to grow and evolve, FinTech companies should prioritize consumers' interests — including both individuals and institutional customers — and provide products and services that are safe, transparent, and user-friendly. These products and services also should strive to enhance consumer choice and expand access to financial services.
- **Promote safe financial inclusion and financial health:** FinTech products and services should be designed to promote financial inclusion and financial health for consumers.

- **Recognize and overcome potential technological bias:** FinTech has the potential to increase access to financial services and generate efficiencies in the sector. However, its use of technological tools, such as algorithms, to test assumptions and make data-driven decisions could contain and perpetuate systemic, historical, and cultural biases (i.e., discrimination against minorities or based on gender). This concern is particularly prominent with online marketplace lenders. FinTech innovators should take proactive steps to ensure the quality of their data and mitigate the potential for bias or negative externalities in the provision of financial services, and the government should assist with developing and evaluating innovations that could mitigate such bias.
- **Maximize transparency:** Building upon the lessons learned from the financial crisis, transparency is critical to balancing the goals of expanding access to the financial system and protecting the system from abuse.
- **Strive for interoperability and harmonize technical standards:** FinTech companies and financial institutions should embed a presumption of interoperability and harmonized (or harmonizable) technical standards in their products and services to “reduce friction for consumers, helping the underserved and well-served alike connect different functions in their financial life.”
- **Build in cybersecurity, data security, and privacy protections from the start:** Protecting consumer and institutional data, while also protecting the integrity of the financial services industry infrastructure, should remain priorities for all FinTech companies.
- **Increase efficiency and effectiveness in financial infrastructure:** Although the whitepaper acknowledges that consumer-facing innovations receive the majority of the current public attention around FinTech, it reminds companies that they should endeavor to increase efficiency, structural integrity and safety, transparency, access, and compliance as enterprise and institutional innovations continue to develop.
- **Protect financial stability:** FinTech companies should continue to work with incumbent institutions, policymakers, and regulators to identify and mitigate potential risks to financial stability.
- **Continue and strengthen cross-sector engagement:** FinTech companies, financial institutions, and government authorities should consistently engage with one another as a means to add value for consumers, industry, and the broader economy.

The whitepaper highlights the Obama Administration’s view that FinTech innovations “have the potential to fundamentally change the financial services industry and the wider economy,” while emphasizing that government and private sector stakeholders must actively participate in FinTech’s development to “ensure growth that maximizes value for the consumer and for the system in a safe and sustainable manner.” At the same time, the whitepaper reflects the Obama Administration’s hopes that industry and other stakeholders will use the framework to understand how they can contribute to “a well-functioning and inclusive financial system,” while also examining their products and services against articulated principles.

Potential Impact

Given that this whitepaper was issued in the waning days of the Obama Administration, it is not clear how much weight or influence it will have on the FinTech agenda going forward. The Obama Administration views the whitepaper as “a product of ongoing public-private cooperation and a roadmap for future collaboration,” as well as a tool to “guide the development of smart, pragmatic, and innovative cross-sector engagement.”

Already, we have seen government agencies and regulators develop a variety of tools to promote FinTech innovation. These include the Office of the Comptroller of the Currency’s (OCC) consideration of applications from FinTech companies to become special purpose national banks, the Consumer Financial Protection Bureau’s (CFPB) Project Catalyst and No-Action Letter policy, and the Securities and Exchange Commission’s (SEC) Fintech Working Group. In addition, last month the Federal Deposit Insurance Corporation (FDIC) announced that it is seeking comment on a new handbook to assist *de novo* organizers as they work to establish a new depository institution and apply for deposit insurance. Also in December, the Federal Reserve Board outlined how it intends to monitor FinTech innovations in a widely-anticipated research paper, and Federal Reserve Governor Lael Brainard gave a speech on the potential opportunities and risks associated with FinTech. It has also been reported that a coalition of major technology companies has called on President-elect Donald Trump to appoint a Treasury undersecretary for technology to support FinTech development.

Since FinTech offers significant potential to increase access to financial services, improve the functioning of the financial system, and promote economic growth, bipartisan consensus could potentially be reached on various parts of the FinTech landscape. Some of the principles and themes outlined in the whitepaper could be the foundations for any legislative and regulatory developments in the FinTech sector under the incoming Trump Administration.

¹National Economic Council, "A Framework for FinTech," January 2017, available at https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/A%20Framework%20for%20FinTech%20_FINAL.pdf.

²The whitepaper uses the term "FinTech" broadly to "encompass a wide spectrum of technological innovations which impact a broad range of financial activities, including payments, investment management, capital raising, deposits and lending, insurance, regulatory compliance, and other activities in the financial services space." The whitepaper notes that such innovations include, for example, mobile payment solutions for consumers and merchants and online marketplace lending.

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