BOZEMAN DAILY CHRONICLE

Biden administration seen aiding digital identities, closing fintech loopholes

December 2, 2020

Caitlin Reilly

Lawmakers and fintech advocates expect Joe Biden's administration to boost the financial innovations that will lead to digital dollars and stronger personal ownership of digital identities but also close some regulatory loopholes that financial technology companies could be exploiting.

The president-elect, who has made economic equality a focus, will take office amid a rapidly evolving fintech landscape that will see advancements in artificial intelligence in finance.

Amy Kim, chief policy officer for the Chamber of Digital Commerce, said it was "a great signal for the industry" that Biden had included so many people familiar with digital assets on his transition team, such as former Commodity Futures Trading Commission Chairman Gary Gensler as well as Chris Brummer and Reena Aggarwal, both of Georgetown University. Brummer hosts a fintech podcast for CQ Roll Call.

Kim said the chamber, which represents the interests of the cryptocurrency and blockchain industry, would push during Biden's term for greater clarity on how financial institutions registered with the Securities and Exchange Commission should handle digital assets.

Isaac Boltansky, director of policy research for Compass Point Research and Trading, said financial services issues will fall directly behind the pandemic, health care and the environment — and will leap into that first tier of priorities if they intersect with economic access and fairness.

"Fintech has a unique runway to tell a story about expanding access," he said in an interview. Boltansky said the COVID-19 pandemic and the challenges the government encountered in delivering financial assistance to individuals earlier this year exposed the "arcane nature" of the U.S. payments system.

"The fact that we're still talking about sending people checks in 2020 should be deeply frustrating to everyone involved. So I think there will be a willingness, if not an eagerness, to examine the financial architecture," he said. "That provides an opportunity for fintechs."

Fintech in Congress

Rep. Bill Foster, a Democrat from Illinois, said that with small majorities in the House and Senate, and a president-elect with a "natural instinct" for compromise, Democrats would look for "early, straightforward bipartisan wins." Foster leads the House Financial Services Committee Task Force on Artificial Intelligence.

"Fintech is an area where that may happen simply because there isn't a natural Democratic or Republican position on many, maybe most, of the issues," he told CQ Roll Call. "It's clear that fintechs are becoming increasingly important, and that they're also going to be an important tool to deal with the problems of the underbanked people and the maldistribution of wealth."

Establishing a road map for creating a secure digital identity, which could modernize public services such as health care, government assistance and licensing, is a top priority next term and has already earned bipartisan support, Foster said. A bill on digital identity that Foster introduced this year was co-sponsored by Republican Reps. John Katko of New York and Barry Loudermilk of Georgia, as well as Rep. Jim Langevin, a Democrat from Rhode Island.

Arkansas Rep. French Hill, a Republican on House Financial Services, said the two parties could likely compromise on a data privacy and ownership framework in the next term. Hill serves on the committee's Task Force on Financial Technology.

"You can't have an effective digital financial services future without data ownership clarity and privacy protection," he said in an interview. "I go back to that as a fundamental decision Congress has to wrestle with, which will speed up, improve and make America more competitive on fintech."

Hill and Foster said establishing a U.S. digital dollar would be a top priority with bipartisan support, as China and other countries move forward with their own central bank digital currencies.

Foster said a Biden administration would take a collaborative, international approach with other democracies to building digital currencies. "We have natural shared interests in an efficient system that works across borders and respects privacy protection against government abuse," he said.

Hill said disagreements may emerge when it comes to the structure of a U.S. digital dollar. The Republican said he supports a tokenized dollar that runs on a blockchain payments rail that would borrow from traditional cryptocurrencies, such as bitcoin and ether, which use distributed ledger technology.

Competing proposals that would allow individuals to hold free, no-fee bank accounts or "digital wallets" with the Federal Reserve have found support among some Democrats, including Sen. Sherrod Brown of Ohio. The ranking Democrat on the Senate Banking Committee introduced a bill this year that would establish digital wallets hosted by the Fed for U.S. residents, citizens and businesses.

The bill borrowed from an idea for "FedAccounts" proposed in 2018 by professors Lev Menand of Columbia Law School, Morgan Ricks of Vanderbilt University Law School and John Crawford of the University of California, Hastings College of the Law.

Menand is a member of Biden's transition team, as is Mehrsa Baradaran, a law professor at the University of California, Irvine. Baradaran's push to revive banking services at post offices has influenced and is sometimes incorporated into account-based digital dollar proposals.

Credit and artificial intelligence

Arkansas' Hill and Diego Zuluaga of the Cato Institute said fintechs that evaluate credit applications or determine scores may face stricter regulations under the Biden administration.

"I believe that could be an area where certain voices inside the Biden administration could delay the greater use of artificial intelligence, which I think is an important contribution to greater credit availability for more families," Hill said.

Zuluaga, an associate director of Cato's Center for Monetary and Financial Alternatives, said the Biden administration may face internal conflicts around fintechs that extend credit to underserved, lower-income and younger customers. In those cases, credit often comes at a higher cost than in the past, he said.

"On one hand, you do want to make finance available to people. On the other hand, you don't want it to be unnecessarily expensive," he said in an interview. "I think for those fintechs, it's going to be very much a question of whether they can justify what they do and whether they can satisfy the officials who are in charge of this."

Foster said deploying artificial intelligence in credit decisions could have "huge advantages" but must be done carefully.

"There has to be a very nuanced attitude toward checking the performance of algorithms before they're deployed to make sure that your training sets, which have all kinds of historical biases embedded in them, don't simply perpetuate those biases," he said.

Regulatory arbitrage

Robert Hockett, a professor at Cornell University Law School, said fintechs built on "regulatory arbitrage," such as payment apps that provide banking services without a banking charter or digital assets that replicate derivatives or corporate securities, would face stricter enforcement than under President Donald Trump. Hockett worked on the presidential campaigns of Sen. Bernie Sanders, I-Vt., in 2016 and 2020.

"A big part of the fintech sector right now is basically about regulatory arbitrage. It's about finding loopholes or ways to get out from under our finance regulatory regime" by calling banking by another name, he said. The Biden administration will "move very quickly to close any loopholes through which fintech firms are currently exploiting ambiguities in the financial regulatory regime."

That likely includes rolling back the national fintech charter established by the Office of the Comptroller of the Currency under Trump that would allow payments firms to get a charter from the federal government, rather than by going state by state, Hockett said. The charter was halted by a lawsuit that's still pending.

"I think we're going to see a revival of anti-fraud regulations, financial regulation and tech regulation that avoids fintechs becoming a kind of loophole out of the financial regulatory regime," Hockett said. "That's going to be good for everybody except for the criminals."