

# I'll Take "President Biden's Enforcement Agenda" for \$1,000, Please

MAY 7, 2021

With every new administration comes a new set of priorities and approaches to the enforcement of law. During the ABA Virtual Litigation Conference, Hunton Andrews Kurth Partner Nash Long served as host of a virtual Jeopardy game with a panel of industry experts serving as contestants opining on how the enforcement priorities of the Biden administration may affect their respective sectors. The panel of experts included Elizabeth Papez of Gibson Dunn, Michelle Spak of Duke Energy, Martin S. Wilczynski from Ankura, and Kobi Brinson from Winston & Strawn.

While the Jeopardy format rung all the bells of nostalgic entertainment, it also provided experts an avenue for discussion through distinct "categories" on various topics. Kobi Brinson tackled the Jeopardy categories of "Taking It to the Bank" and "People Are Policy."

Kobi focused on how Biden's potential picks to lead the Consumer Financial Protection Bureau (CFPB) and the Office of the Comptroller of the Currency (OCC) can implement structural change through their respective anticipated policy agendas.

- **CFPB Policy Leader Rohit Chopra.** Rohit Chopra, Biden's pick to lead the CFPB, is currently a commissioner at the Federal Trade Commission (FTC). Kobi theorized that as Director of the CFPB, Chopra would expand on his ideals for interagency cooperation and seek more concrete collaboration with both the FTC and the Department of Education (DOE), to address consumer protection issues stemming from student loans and the FinTech industry. In addition to FinTech and student lending, Chopra's other policy interests include a renewed focus on economic racial equity, mortgage servicing, credit reporting, and regulatory enforcement.
- **Potential OCC Policy Leader.** Though Biden has yet to officially pick a leader for the Comptroller of the Currency, Kobi concluded that the previous favorite for the position, former Obama administration official Michael Barr, was effectively taken out of the running after Barr faced opposition from progressives for being too soft on the Fintech industry. Kobi identified Mehrsa Baradaran, a law professor at UC Irvine, as the new front-runner for the Comptroller position. Whoever takes up the post as Comptroller will face policy questions on issues ranging from regulating FinTech to revising the Community Reinvestment Act (CRA).

For the financial institutions Kobi has built her practice representing, Kobi identified several other potential areas of risk and regulatory change that could have direct effects on the industry. Kobi especially highlighted how the Biden

administration’s priorities on racial equity, student lending, and the emergence of the FinTech industry will likely have a substantial impact how financial institutions interact with government agencies and policies.

- **CFPB Commitment to Racial Equity.** Kobi cited the early actions of Dave Uejio, who is serving as Acting Director of the CFPB while Chopra awaits confirmation by Congress, to predict that the CFPB will prioritize taking “bold and swift” action on racial equity. Kobi acknowledged that the shift in focus to racial equity may lead to more regulatory burdens for financial institutions. To lessen the regulator burden, Kobi suggested lenders and creditors conduct a preemptive review of polices to ensure an even application of procedures across all demographic groups.
- **Biden Administration-Wide Racial Equity Focus.** Kobi emphasized that there is an administration-wide commitment to racial equity. Kobi predicted that the OCC under Biden is likely to revise the CRA to reflect a reinvigorated investment in low- and moderate-income communities and the CFPB will collaborate with the DOE to protect borrowers. Of course, with a recommitment to consumer protection comes a new regulatory threshold for financial institutions to overcome. Kobi again urged financial institutions to lessen the burden of increased regulation by taking preemptive actions to address consumer protection holes in community investment and student loan servicing.
- **FinTech in the Biden Administration.** Another area where financial institutions may feel the impact of the Biden administration’s new priorities is FinTech. Though the FinTech industry is relatively new, Kobi emphasized that the industry is quickly creating a foothold in the everyday lives of consumers through “NeoBanks” like Venmo and CashApp and “Buy Now, Pay Later” quasi-loan services provided by companies like Afterpay, Klarna, and Sezzle. The FinTech industry can expect the Biden administration to strengthen and adjust regulations to close loopholes that allowed FinTech firms to exploit ambiguity.
- **Biden Administration Recognition of the Benefits of FinTech.** But Kobi also put a spotlight on a fascinating nuance to the conversation surrounding FinTech. Though FinTech will surely be regulated more under Biden, that does not mean the administration will seek to taper its growth. Kobi predicted that the Biden administration will recognize the potential of FinTech as a partner for addressing racial equity by expanding access to financial services through convenience and lower costs.

Finally, in the Final Jeopardy round, Kobi gave her overarching takeaway for financial institutions from the early priorities of the Biden administration. Kobi advised that this is an excellent opportunity for financial institutions, both on the traditional banking and FinTech side, to seize on the new administration’s commitment to racial equity by implementing bold policies that reaffirm their commitment to serving consumers. Kobi observed that the administration is interested in structural change that can only be accomplished through interagency cooperation. So Kobi advised that financial institutions should work with counsel to figure out how best to minimize risk posed by this new regulatory landscape that will undoubtedly bring increased regulatory burdens and greater information flow between agencies.

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Kobi Kennedy Brinson



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