POLICY MEMO

From: **The Smith-Free Group**

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RE: **A Look Ahead: Biden & Financial Services/Economic Policy**

Former Vice President Joe Biden has maintained a nine-point lead over President Donald Trump for the past seven weeks, and polling also has shown significant gains for Democrats in the race to control the Senate. With the Democrats now expected to maintain—or even expand—their margin in the House, Democrats, led by Biden, could be able to enact a new policy agenda in 2021. Biden's sudden move at the start of the COVID-19 pandemic from struggling primary candidate to presumptive Democratic nominee to leader in the general election polls follows as much or more from external forces—the public health crisis, its economic consequences, the social justice movements following the killing of George Floyd, and President Trump's responses to them—than any of his own actions. Still, Biden has expertly navigated the circumstances, including helping to bring unity to the typically fractious Democratic party. These efforts have impacted the campaign's domestic and economic proposals, which have been driven both by political imperatives and underlying policy goals. *This memo seeks to outline key economic and financial services planks of a possible Biden presidency and potentially Democratic-controlled Congress and considers the people who could shape and enact the new policies.*

Despite a five-decade career at the highest levels of American politics, Biden does not have a signal economic policy priority beyond the hazy (but politically viable) notion of protecting the middle class. (In fact, two of his better-known domestic policy achievements, bankruptcy and criminal justice reform, would seem to put him at odds with a significant portion of his base and current policy advisors.) While Biden is frequently cast as a "moderate" or centrist Democrat, a key factor to becoming Barack Obama's vice president, it is Biden's "establishment" credentials, meaning his loyalty to the Democratic Party, that underly his policy agenda. One of Biden's great political skills is his ability to move to the center of the party, wherever that may be at a particular moment. As a pragmatist, Biden's policy outlook has shifted with the times—and in the current campaign that means those positions have shifted leftward. The Biden campaign's adeptness at finding the middle ground (in a shifting policy environment) can obfuscate its ultimate policy ends. In early July, for instance, the Biden-Sanders unity task forces released recommendations in six areas: climate change, the economy, criminal justice, health-care, education and immigration. Soon after, the official campaign began the release of its own policy agenda, "Build Back Better," and subtly reframed some of the key issues in task force reports. The task forces reflected smart intra-party politics, an attempt to protect Biden's left flank (and assuage progressives who did not get a full primary season) and unify the party ahead of the November election, all at a moment when the pandemic and opposition to Trump will bolster those efforts. "Build Back Better" is aimed more at the general election—and at undecided voters in swing states.

Key Influencers

Biden-world has several different circles of economic policy advisors working on separate work streams and with differing access to the highest levels of the campaign. The task force was one of these circles; it included key Biden economic advisors from his days in the White House—Jared Bernstein and Ben Harris—as well as labor officials and academics focused on inequality and checking corporate power.[1] Outside of the task force, what all the campaign participants, who may number in the hundreds, have in common is their pledge to operate with heightened secrecy. In general, they are expected to keep this campaign/transition work quiet; they can mention it to friends and colleagues but not "on social media," according to an internal memo referenced in press reports. The participants represent the full Democratic ideological spectrum. One group of advisors includes Clinton/Obama advisors, such as former Chicago Mayor and Obama Chief of Staff Rahm Emanuel, Gene Sperling, director of the National Economic Council under presidents Clinton and Obama, and former Treasury Secretary Larry Summers, who have ties to traditional finance and big business.

A second circle includes left-leaning economists, some of whom (Bernstein and Harris) worked for Biden when he was vice president. This circle includes scores of advisors, many whom are academics and some of whom served in the Obama Administration; for instance, Austan Goolsbee, former chair of Obama's Council of Economic Advisors and now a University of Chicago professor, and Heather Boushey, CEO and co-founder of the Washington Center for Equitable Growth. Goolsbee and Boushey, along with Byron Auguste, a National Economic Council deputy in the Obama Administration, and Indivar Dutta-Gupta, co-executive director at the Georgetown Center on Poverty and Inequality, lead Biden's "economic policy committee," and "a smaller core of liberal economists" (from this team) conduct Biden's regular economic briefings, according to press reports. Center for American Progress, the think tank founded by John Podesta, is engaged with the policy teams but unlike in 2016 when it dominated candidate Hilary Clinton's policymaking apparatus. Still, CAP-affiliated participants include board member Eric Mindich, a onetime Goldman Sachs partner and hedge fund operator, Michael Barr, a University of Michigan law professor who was a chief architect of the Dodd-Frank Act when he served in Obama's Treasury Department, and Gregg Gelzinis, a senior policy analyst who focuses on financial matters.

In addition, the campaign has established a series of loosely affiliated volunteer policy "working groups" that include hundreds of participants, many of them former senior congressional staff or mid-level agency officials. These groups also are a reminder that the House and Senate will have an important role in shaping the Biden agenda. Among the economic sub-groups are banking/finance, manufacturing, tax and battleground state economies (emphasizing that these are both policy and political exercises). These groups meet over Zoom or other video-conferencing platforms to discuss policy initiatives in a Biden administration. They are often tangential to the regular campaign apparatus; many of the participants were unaware of the specific task force work and did not see those recommendations ahead of their release. Graham Steele, formerly a senior banking aide to Sen. Sherrod Brown (D-OH) who now directs the

[1] The co-chairs were Rep. Karen Bass (D-CA), rumored to be on the vice-presidential short list, and Sara Nelson, a flight attendant union leader. The other members were: Bernstein; Harris; Lee Saunders, president of AFSCME; Sonal Shah, who served as Pete Buttigieg's policy director; Darrick Hamilton, an Ohio State University economics professor focusing on income inequality; and, Stephanie Kelton, an economics professor at Stony Brook University who is a leading proponent of modern monetary theory.

Corporations and Society Initiative at Stanford's Graduate School of Business, leads the banking/finance Google Hangouts. These informal policy teams include representatives from U.S. corporations, including the largest U.S. banks; however, registered lobbyists are not allowed to participate. Their work is funneled into the campaign through Goolsbee and Boushey.[2]

We believe the mantra, "personnel is policy." Guiding the Biden transition effort—and beginning the process of filling scores of administration positions—is former Sen. Ted Kaufman, Biden's long-time chief of staff in the Senate. The group includes former aides to Biden and Sen. Elizabeth Warren as well as Obama administration alumni and current House chiefs of staff.[3] As for heading personnel decisions, we expect that it would be someone linked to Warren who has that role for key economic slots. Former Senator Chris Dodd, who leads the vice-presidential vetting, may have some role on finance-related appointments as well but we expect his influence to less than Warren's in this area. If the economy remains in the doldrums, an incoming Biden administration might be expected to hold a series of policy panels (that include industry CEOs and other stakeholder groups)—similar to what Clinton did after his election—in an effort to build consensus for its agenda.

<u>Financial Services and Economic Policy Highlights</u>

The pandemic-induced recession recast the economic policy discussion in the 2020 election. Within the Democratic Party it elevated issues tied to income inequality (linking it to broader social justice issues as well) and normalized more substantial federal government responses to the economic crisis. Income inequality and expanded federal government spending are central tenets of Biden's platform, too. "The economy is not working for the American people," begins the economic policy task force's section, and its recommendation portion notes the goal is an economy "for the people, not just the big corporation and the wealthiest few." The differences between the task force recommendations and the campaign's "Build Back Better" agenda is more emphasis and tone and less policy substance. The aim of the task force was to unify the party and the campaign agenda is directed toward voters (especially in swing states). "Build Back Better" emphasizes "the old economy's structural weaknesses" and seeks to undo Trump policies that reward "wealth over work and corporations over working families." The first specific "Build Back Better" policy announcement was infrastructure and manufacturing (not climate change, which led the task force recommendations). In all campaign and task force documents, the banking and financial services sections are less prescriptive than in other categories, including economic ones, such as workers' rights, taxation, climate change, health care; and, education. Key banking-related points are outlined below, followed by consideration of other economic proposals that have implications on how companies operate (taxes, for instance). In short, Biden's financial services policy pivots on the twin hinges of expanded consumer protections/access to banking services and restrictions on large financial institutions.

[2] On a more day-to-day basis within the campaign world, former Obama Commerce official Lawrence Strickling coordinates these work streams. Also, managing economic policy workflows are Bruce Reed, Biden's first chief staff as vice president and the former head of the centrist Democratic Leadership Council, the defunct group that once sought to pull the party rightward, and Jake Sullivan, a senior policy advisor on Clinton's 2016 campaign. Stef Feldman is the campaign's policy director.

[3] Transition team members include: Yohannes Abraham, Mark Gittenstein, Gautam Raghavan, Angela Ramirez, Evan Ryan, and Julie Brinn Siegel.

Financial Services: Key Themes and Policies

Big Bank Restrictions

- Strengthen Dodd-Frank, particularly a focus on recent changes to capital and liquidity rules
- Limits on mergers and acquisitions: “thorough review” to include whether new combinations, among other factors, “demonstrably caused harm to workers, raised prices, exacerbated racial inequality or reduced competition”
- Tax “liabilities of ultra-large banks to promote financial stability”
- Avoid “too big to fail” institutions (and expect rhetoric about banks that are “too big to manage”)
- Expand “safeguards that separate retail banking from more risky investment operations” (a return to Glass-Steagall, or a modernized version has long been a policy goal of both Kaufman and Warren
- Pursuit of criminal penalties for banking executives whose firms engage in illegal activities

Consumer Protection/Access to Banking Services Priorities

- Federal Reserve real-time payment system
- Postal banking (physical banking locations); additional support for community development financial institutions (CDFIs); and minority business investment initiatives
- Strengthen CFPB
    - Oversight of consumer lending
    - Enforcement actions under abusive or deceptive practices standards and use of tests to assess racial equity
    - Creation of Public Credit Reporting Agency: federal acceptance of its reports for student, home and other loans that receive government guarantees, review of use of artificial intelligence/algorithms for discriminatory impacts, and review of non-traditional sources of data.
- Limit predatory interest rates
- Housing
    - Expand affordable housing
    - Racial equity/stop gentrification
    - “Bill of Rights” for homeowners and renters

The Biden agenda also will include policy proposals aimed at limiting corporate power that will have significant operational impact on financial services firms, too. There will be particular pressure to restrict stock buybacks, perhaps linked to any form of federal government support. This focus on “stakeholder” capitalism will amplify ESG-related goals, which have become viewed through extreme partisan lenses in Congress. Climate risk stress tests from the Federal Reserve and SEC rulemakings related to climate risk disclosure are highly likely in a Biden administration. In addition, both the FSOC and the prudential regulators could push firms to stop, or slow, financing of fossil fuel projects, or others that do not meet new environmental standards. (Regulators could achieve this through increased capital surcharges or investment portfolio restrictions.) Existing House legislation and SEC advisory committee recommendations exist as blueprints for more robust corporate governance reporting, including on racial composition of the corporate boards and hiring, top House priorities. Warren has outlined a more leftward agenda for these principles in the “Accountable Capitalism Act,” which would mandate that companies with $1 billion or more in annual revenue obtain federal charters from a newly-created Office of United States Corporations. The charter would require company directors to move beyond considering the interests of just shareholders to all relevant "stakeholders."[4] The bill, while aspirational, represents one edge of the legitimate discussion on the issue. More likely to pass a Democratic-controlled Congress are changes to the tax code that raise the corporate rate to 28% (and other changes addressing manufacturing and investment tax credits and a raft of proposals effectively raising income tax rates on high net-worth earners), a raising of the federal minimum wage to $15 an hour, and expanded family leave policies. A federal privacy law still remains uncertain but any legislation would likely establish the federal standard as the floor and not the ceiling.

Congress

Many of the proposals outlined above could be enacted by regulators without congressional action. Moreover, Democratic congressional priorities, favored by House Financial Services Chairwoman Maxine Waters and potential Senate Banking Chairman Sherrod Brown and Sen. Elizabeth Warren also should be considered as viable legislation in a Biden administration. Still, it is not clear that there is unified support for the Biden financial services goals outlined above. Both Brown and Waters have to manage significant moderate forces within their own caucuses; in fact, in the Senate, moderates have often worked more effectively with Republicans than the Brown and Warren factions. Among Democrats, support for the CFPB and its agenda would likely gain the broadest support and next might be the housing agenda. (To date, the various policy agendas avoid detailed commentary about the government's role in the secondary housing market—an area where there is a significant disagreement among Democrats beyond the GSEs affordable housing goals.) Consensus on bank holding company policy (capital/liquidity rules) and a separation of commercial and investment banking are far less likely to occur.

Moreover, the prospects for a Biden-Democratic legislative agenda remain murky/complicated because of the filibuster. The reconciliation process allows for limited activity—and it could be used, for example, to undo portions of the 2017 tax bill, including raising the corporate tax rate and other changes affecting high-income Americans. It is hard to imagine a scenario in which the Republicans cooperate with a Democratic majority (which is likely to be slim), especially because if the Republican are in the minority in 2021 it will be because they lost races in the competitive "purple" states and sitting GOP Senators will face little political pressure at home to work with the Sen. Schumer-led Democrats. One can imagine a scenario where even Biden, who spent four decades in the Senate and still reveres its collegiality and his ability to work with all colleagues, would accept a change: an ongoing pandemic creates pressure for bold and immediate action (and the press will be fixated on the 100-day measurement of an administration). However, it is equally plausible that Democrats are loath to change tradition and Biden seeks to overcome partisan divides as he leads. We believe that it is possible that the legislative filibuster will end, but it is by no means certain.[5] If the legislative filibuster remains, Biden will not be able pursue an aggressive legislative agenda.

[4] These include company workforces, communities, customers, the local and global environment and community and societal factors; the bill requires 40% of directors to be selected by employees and restricts on stock sales by directors and officers.

[5] Biden repeatedly said, both during the primary debates and in an interview with the *New York Times* Editorial Board, that he does not support eliminating the legislative filibuster. However, campaigning is different from governing. In June, Senator Chris Coons (D-DE), a Biden ally, told *Politico*, "I will not stand idly by for four years and watch the Biden administration's initiatives blocked at every turn. I am going to try really hard to find a path forward that doesn't

Administration and Regulatory Agencies
The success of any Biden agenda ultimately will depend on the regulators ("personnel is policy") because whether actions occur solely within the agencies or begin in Congress, it will be up to the regulators to implement them. The speed of change also will be variable because while Biden can immediately appoint new heads in some agencies, in others he will have to wait for the end of not-yet-expired terms of existing financial regulators, particularly true at the Federal Reserve. Moreover, an intriguing factor is the role that Warren will play. Biden has kept her close by consistently leaking her name a vice-presidential candidate, an offer she is unlikely to get. If not Biden's number two, speculation will immediately turn to whether she will be nominated to be Treasury Secretary. Democrats will need to have a two-seat Senate margin for Biden to contemplate this appointment—and because of the Georgia runoff it is possible that will not be known until January. Still, Warren does have a significant role in economic policy-making and personnel decisions, and we think she has the political capital to block some nominees (for instance the CEO of a large bank) but most of the other potential nominees will have past links to major Wall Street firms or the big asset managers. A short list of nominees (besides Warren) may include: Federal Reserve Governor Lael Brainard, a former senior Treasury official; Gary Gensler, a former Goldman Sachs banker who chaired the Commodities Futures Trading Commission during the Obama presidency; and Antonio Weiss, a senior counselor at Treasury. (Warren blocked his nomination for top Treasury job in 2015 but we do think that his work at Treasury, in role that did not require Senate confirmation, shifted Warren's view on him.) The possibility of either Larry Summers or Gene Sperling should not be dismissed but we think that they are long shots—and the nomination of either would indicate a willingness to limit progressives' influence on aspects of financial and economic policymaking.[6]

Also, we believe that she will push for one of her proteges for the director of the National Economic Council, which coordinates the White House's financial regulatory policy. A leading candidate will be Bharat Ramamurti, her long-time senior banking aide who now serves on the COVID-19 Congressional Oversight Committee and is a managing director at the Roosevelt Institute, a progressive think tank closely aligned with Warren's policy goals. Potential senior officials in Treasury's Domestic Finance division could include: Key Bank executive Don Graves, a former Biden domestic policy advisor; CFTC Commissioner Rostin Behnam; Barr; Jonah Crane, a senior Obama Treasury official, and Steele, among others. Several of these people also could be considered for a senior NEC role.

The pace of change at the regulatory agencies will be varied. At the Federal Reserve it will be slow because openings in key leadership positions would not occur until September 2021, when Randal Quarles' term as vice chair for supervision expires; the vice chair role was created under Dodd-Frank and takes the lead of rules impacting bank holding companies. (Quarles' regular Board term continues until 2032.) Chair Jerome Powell's four-year term ends in February. Powell has won praise from both Republicans and Democrats but there is some chance he would be reappointed (and no chance that Quarles will remain in the key

require removing what's left of the structural guardrails, but if there's a Biden administration, it will be inheriting a mess, at home and abroad. It requires urgent and effective action." Democrats are willing to threaten change but it is not clear whether there is enough support in the caucus to enact change.

[6] On a related note, we understand that Rahm Emanuel is interested in serving as United States Trade Representative.

regulatory rulemaking slot). Neither Powell nor Quarles is likely to step away from their roles before their terms end. Quicker changes will occur at the CFPB and the OCC. Now that the Supreme Court has ruled that CFPB's director can be fired at will by the president, Biden, if elected, will remove CFPB Director Kathy Kraninger, if she does not resign. Expect increased enforcement actions and a robust agenda, including reconsideration of rule-makings that are in process. High on its list will be fair-lending laws. Installment lenders, debt collectors and mortgage servicers are also likely to face extra scrutiny, along with the credit reporting bureaus. Warren and Brown recently raised "grave concerns" in a letter to the GAO questioning whether the CFPB is "fulfilling its statutory obligations." Warren, who first proposed the agency created under Dodd-Frank, will play the key role in picking its next leaders. A possible candidate could be Sarah Bloom Raskin, who served in the Obama Treasury and was a Fed governor and Maryland's commissioner of financial regulation. The pool of potential nominees also could come from a state or municipal consumer protection advocate.

At the OCC, Acting Comptroller Brian Brooks also will not remain if Biden wins; it will be interesting to see how quickly a new comptroller moves to reconsider the agency' 2020 Community Reinvestment Act rules (which were not joined by the Fed or the FDIC). There may be more stability at the FDIC, which is led by Chairwoman Jelena McWilliams, who once worked for Banking Committee Chairs Mike Crapo (R-ID) and Richard Shelby (R-AL) and whose term extends to June 2023. In the past, the FDIC chair has been left in place even with an administration switch. We expect McWilliams to stay in office (at least for a while) but over time, the Biden administration will alter its board makeup by filling the open vacancy (Steele is a strong possibility here too) and replacing both Brooks and Kraninger. Biden also will move quickly to replace the FHFA Director Mark Calabria, whose views are antithetical to Democrats on key issues facing the agency, including ending conservatorship, affordable housing goals and potential GSE reform. Congressional Democrats (Waters and Brown, in particular) will want a strong say here but, as noted previously, significant intra-party differences exist between progressives and former Obama Treasury officials who are active in this policy space.