

Remarks by Assistant Secretary for Financial Institutions Graham Steele at the George Washington University Law School Business & Finance Law Program

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INTRODUCTION

Thank you, Professor Bearer-Friend, for that kind introduction. It is nice to be back at GW Law for the first time in a long time. I want to thank the friends and colleagues who are here today, particularly Bharat, who was gracious enough to agree to join me for a conversation about the Biden Administration's economic policy.

My connection to GW Law has helped to cement my long-held belief that I wanted to dedicate my career to public service. I still recall Professor Dalia Tsuk Mitchell's Corporations class during the fall semester of my 2L year in 2004. Her critical takes on the Delaware Chancellors' opinions made me appreciate business law as a means of understanding how economic policy shapes our broader society.

I have similarly benefitted from the wisdom of former colleagues like Professor Bearer-Friend, who was a fellow tax staffer in the U.S. Senate during part of my tenure there. Tax policy was not my strong suit, to say the least, but in the entrepreneurial environment of Capitol Hill, it helps to have brilliant colleagues with similar progressive values to help ensure that those values translate into economic policy.

Finally, while I regret never having taken a class with him during my time at GW Law, I want to express my immense gratitude to Professor Emeritus Art Wilmarth. No one has been more generous with his time, more enthusiastic to welcome fellow travelers into the world of U.S. banking law and policy, and more willing to share his encyclopedic knowledge of the financial system. For every current-day banking policy issue, you will likely find a decades-old, exhaustively researched law journal article written by Professor Wilmarth that explains the roots of the problem and the path forward. Professor Wilmarth has left an indelible mark in his field by inspiring an entire generation of banking law scholars.

Turning to the topic of my remarks today, my reflections on the experience of serving for two years as the Assistant Secretary for Financial Institutions at the U.S. Treasury Department.

The Assistant Secretary for Financial Institutions oversees a broad policy portfolio, encompassing banks, credit unions, the insurance sector, cybersecurity and critical infrastructure, community development, and consumer protection. I have organized this portfolio according to the “seven Cs”: community, climate, cybersecurity, cryptocurrency, capital, competition, and consumers. The Biden Administration has made meaningful progress on these “seven Cs” by advancing an affirmative vision of a financial system that is more stable, less concentrated, and more equitable for consumers and communities. We have also responded to unforeseen challenges that have arisen along the way.

COMMUNITY

I’ll begin with community. With all that has happened in the world since January 2021, it is easy to forget that three years ago, the Biden Administration took office in a moment of dramatic economic upheaval caused by the COVID-19 pandemic. The passage and rapid implementation of the American Rescue Plan prevented the short-term shock of the pandemic from devolving into a longer-term economic disaster. Recent analyses of programs like Treasury’s Emergency Rental Assistance Program have demonstrated that Treasury’s approach to pandemic-response programs resulted in resources being effectively targeted to women, communities of color, and the lowest-income households.¹

We are proud to have achieved a historically rapid recovery from an economic crisis, but that was not the end of our work. This Administration recognizes that a lack of economic opportunity for communities of color, low-income communities, and rural areas impedes economic progress for our nation overall, and we have been focused on building a more equitable economy for the long term. We have implemented programs that have made available historic funding to mission-driven organizations for the purpose of opening access to capital and financial services for financially underserved borrowers and economically distressed places. Investing in financially underserved communities is not only consistent with our highest ideals; it is essential to our shared economic growth and prosperity.

This is a transformational moment in community finance, not only because of the scale of federal investments, but also because Treasury has crafted an approach to community finance policy to ensure that these resources have a deep impact and meet the needs of underserved communities. For example, Treasury has taken significant steps to better define and

safeguard the Community Development Financial Institution (CDFI) mission of promoting community development—including, for the first time, establishing responsible financing guidelines for all CDFIs.² Together with other efforts, like the reforms made by independent regulators to the rules implementing the Community Reinvestment Act, these sustained investments seek to target support to households and small businesses in low- and moderate-income communities. Today, I published a blog on the Treasury website that details Treasury’s approach to equitable community finance policy. The public sector has laid a foundation, and now private investors have an opportunity to consider how they can bring private capital to bear in ways that build on this foundation, promoting equitable growth that benefits all people and communities.

CLIMATE

Next, I will turn to climate. In May 2021, President Biden issued the Executive Order on *Climate-Related Financial Risk*,³ which tasked Treasury’s Federal Insurance Office with assessing “the potential for major disruptions of private insurance coverage in regions of the country particularly vulnerable to climate change impacts.” In November, we issued a revised proposal to collect, for the first time in history, a limited amount of historical and current underwriting data on homeowners insurance from certain insurers in order to assess the role of climate change in the decline in the availability of property insurance in the United States, especially in certain markets.⁴ This work has equity implications, as studies have shown that traditionally underserved and disadvantaged communities and consumers, including those who are low- and moderate-income, are hardest hit by climate change. It also bears on financial stability, as impacts in the insurance market can have potentially significant consequences for homeowners and their property values, which can spill over to other parts of our interconnected financial system.

Also pursuant to the climate financial risk Executive Order, following a recommendation from the Financial Stability Oversight Council, Treasury’s Office of Consumer Policy in September released a report on the *Impact of Climate Change on American Household Finances*.⁵ The report found that climate change is resulting in profound impacts on household finances—from pressure on income and expenses to real and personal property damage, to reduced access to financial products and services, including insurance as I just discussed. It also highlighted how the intersection of economic and social vulnerability and place-based exposure to climate hazard means that communities that have been historically underserved or subject to disparities are at disproportionate risk of financial harm, even though they are

not the people who have most benefitted financially from the activities driving climate change.

Treating only the symptoms of climate change will not be sufficient. That is why, in addition to the Inflation Reduction Act and the other historic investments that the Biden Administration has made in the climate transition, Treasury has issued principles-based guidance to the financial sector in financing the climate transition. In September, the Department released its voluntary *Principles for Net-Zero Financing & Investment*.⁶ The Principles state that financial institution net-zero commitments should be in line with limiting the increase in the global average temperature to 1.5 degrees Celsius; affirm that financial institutions that have made these commitments should develop transition plans with clear practices, targets, and metrics; and note that financial institutions that have made such commitments should support their clients and portfolio companies in adopting their own transition plans.

Addressing the social and economic impacts of climate change will require mobilizing the financial system to both address risks and mitigate harms. That is why climate change is a priority for the Treasury Department.

CYBER

Moving ahead to the third “C,” cybersecurity, Treasury’s Office of Cybersecurity and Critical Infrastructure Protection coordinates Treasury’s role as Sector Risk Management Agency for the financial services sector. Shortly after I joined the Department a little over two years ago, Russian state-sponsored cyber actors conducted a wave of cyberattacks against Ukrainian infrastructure, including several attacks targeting financial services sector entities, in the weeks following Russia’s invasion of Ukraine. By April 2023, Russia’s attempts to dominate the cyber landscape had not materialized in tangible results, and there has been a continued lull in their state-sponsored activity.

That does not mean that all has been quiet in terms of malicious cyber activity. In October, for example, several cloud service providers reported that they had withstood the internet’s largest-known distributed denial-of-service (DDoS) attack, with one cloud service provider reporting that it experienced an attack more than seven times larger than the previous largest known attack. Industry sources have also reported a substantial resurgence in ransomware attacks in the past year. To cite two notable recent public examples, in February and March, a ransomware attack on the trading firm Ion disrupted its cleared derivatives business for

several days. In November, the U.S. broker-dealer affiliate of the bank ICBC suffered a ransomware attack that impacted its client clearing business. Treasury has increasingly served as a coordinator for financial institutions and regulatory agencies to plan for, and respond to, these kinds of cyber incidents.

Treasury also advances Administration policies for financial sector cybersecurity and infrastructure protection. This has placed us at the forefront of some of the most important emerging cybersecurity policy issues of the day, including our report on the *Financial Services Sector's Adoption of Cloud Services*,⁷ and the work that we are undertaking on the implications of artificial intelligence (AI) on financial services sector cybersecurity. The cloud report highlights some of the key challenges of increased cloud adoption, including insufficient transparency to customers pertaining to operations and operational incidents at cloud service providers; unequal dynamics in cloud contract negotiations, which can particularly affect smaller firms; and the potential impacts that market concentration among cloud service providers could have on exposures to operational risk and general sector-wide resilience. We are working toward establishing a more transparent model for cloud services that places less pressure on cloud customers and asks cloud service providers to take more responsibility for the security of those customers. These changes would particularly benefit smaller institutions such as community banks and credit unions. Treasury has also been tasked by the President, through the *Executive Order on the Safe, Secure, and Trustworthy Development of Artificial Intelligence*, with issuing a report on best practices for financial institutions to manage AI-specific cybersecurity risks.⁸

While none of the recent events that I have noted have resulted in catastrophic cyber incidents, they are increasing in their frequency and impact. Indeed, it is likely a matter of when—not if—we experience a catastrophic cyber event. The increasing adoption of cloud services and AI will further raise the stakes for public- and private-sector efforts to ensure operational and cyber resilience. That is why Treasury takes its cybersecurity role so seriously. Confronting the growing cybersecurity risks requires a steadfast commitment to an all-hands-on-deck approach to public-private coordination.

CRYPTO

Turning to the next “C,” crypto-assets have occupied an outsized amount of policymakers’ bandwidth over the past three years relative to the value of their demonstrated use cases. In the spring of 2022, the President issued the *Executive Order on Ensuring Responsible*

Development of Digital Assets,⁹ which tasked Treasury with issuing a series of reports, including our Office of Consumer Policy's report on *Crypto-Assets: Implications for Consumers, Investors, and Businesses*.¹⁰

That report noted that consumers, investors, and businesses engaging with crypto-assets are exposed to conduct, operational, and intermediation risks, and risks from regulatory non-compliance. These factors contribute to frequent instances of operational failures, market manipulation, fraud, thefts, and scams. There are also unique risks associated with crypto-asset offerings, such as data privacy and security risks, cost structure concerns, and other risks related to new forms of discrimination and unfair and deceptive acts and practices. We also focused on the claims that crypto-assets can advance financial inclusion, concluding that although some have argued that digital assets have the potential to improve access to financial services for financially underserved communities, that vision has not materialized.

Our report noted that the U.S. generally has strong investor and consumer protection laws that address many of the risks posed by crypto-assets. Where existing laws and regulations apply, they must be enforced vigorously so that crypto-assets and services—and the consumers who use them—are subject to the same protections and principles as other financial products and services.

Less than two months after we released the report, one of the leading crypto-asset exchanges, FTX, filed for bankruptcy. While consumers and investors have suffered meaningful and unnecessary harms as the crypto hype met the cold reality of “crypto winter,” so far crypto-assets have not undermined U.S. financial stability more broadly. That is due in large part to the federal banking agencies taking a careful and cautious approach that has largely maintained the safety and soundness of banking institutions in the context of these extremely volatile financial products. In my view, the agencies have responded with appropriate prudence to the destabilizing events in the crypto-asset markets.

Our nation's long history of financial booms and busts has repeatedly shown the failures of race-to-the-bottom regulatory approaches, which lead to consumer manipulation, threats to financial stability, and recessions. After every financial crisis, we have adopted a set of fixes, from the National Bank Act to the New Deal banking legislation to the Dodd-Frank Act. For crypto-assets, policymakers have a chance to act before a crisis to adopt high standards that support responsible innovation. At the same time, it is critical that any legislative proposals not undermine the already robust regulatory foundations that apply to financial institutions and capital markets.

CAPITAL

The next “C” is capital, meaning the shareholder equity and other loss-absorbing funding that enables banks to fund customers and businesses resiliently throughout periods of economic ups and downs. The issue of bank capital was front and center during the Global Financial Crisis of 2007-09, and it has again come to the fore in the wake of the rapid failure in early March of Silicon Valley Bank (SVB), followed two days later by the failure of Signature Bank. These events created the potential for significant impacts to the broader banking system and U.S. economy. In response to concerns about potential broader contagion in the U.S. banking system, Treasury, the FDIC, and the Federal Reserve took actions to protect depositors and provide additional liquidity. While First Republic Bank failed two months later, that was more of an aftershock of the March developments than a sign of any shift in the fundamental health of the banking system, and we believe that our actions restored public confidence in the banking system and protected the American economy.

Nonetheless, over the course of two months last spring, we experienced the second, third, and fourth largest bank failures in U.S. history by assets. SVB, Signature, and First Republic’s failures were caused by classic bank runs, albeit at historic proportions. One factor motivating the depositors’ run on SVB was a concern about its solvency, particularly the risk that the unrealized losses on the firm’s securities holdings exceeded the firm’s shareholder equity. This loss of confidence underscores the importance of credible and robust capital standards and prompt supervisory intervention to address weaknesses. The tailoring framework implemented by the previous Administration that weakened, and in some cases removed, regulatory and supervisory requirements for large regional banks was undergirded by a belief that the failure of those banks would not have broader systemic impacts.¹¹ In hindsight, that belief was clearly misguided.

The President has urged the banking regulators, in consultation with the Treasury Department, to consider a set of reforms that would reduce the risk of future banking crises.¹² The banking agencies have proposed rules that would implement the final elements of the Basel III international capital reforms and proposed additional revisions to their prudential frameworks, including rules for long-term debt and resolution planning. Treasury, across Administrations, has long supported the efforts of the U.S. banking agencies to implement the Basel Accords in a manner consistent with the unique structure of the U.S. banking system to further safety and soundness¹³ and promote financial stability.¹³ This series

of reforms both completes some of the work that began in the wake of the Global Financial Crisis and addresses specific vulnerabilities highlighted by the events of last spring.

The banking agencies have taken significant steps to address some of the underlying causes of the 2023 regional bank stress, but there are a few items that could warrant additional scrutiny. First, while the Basel proposal incorporates unrealized gains or losses on available-for-sale securities in the capital requirements applicable to banks with \$100 billion or more in total assets, it may be worth reassessing the treatment of unrealized gains or losses in banks' available-for-sale and held-to-maturity securities under both capital and liquidity frameworks.

Second, there are important questions that remain about whether the current prudential framework sufficiently addresses the risks that arise from the rapid growth in a bank's assets in a timely manner. For example, the phase-in of the application of requirements like the stress test and stress capital buffer contains significant lags. The capital requirements for large regional banks are also relatively static, meaning that many of the largest U.S. non-global systemically important banks have the same risk-based capital requirements as much smaller and less complex banks. Third, the application and calibration of the various liquidity requirements for large, regional, and midsize banking institutions could likely be updated based upon recent experience, including by revising the treatment of both uninsured and brokered deposits. Finally, I would note that Signature and First Republic operated without bank holding companies and were therefore not subject to the holding company regulatory regime, including regulatory requirements like the supervisory stress testing framework, potentially undermining the effectiveness of supervisory and resolution regimes. While there has been progress on some reforms—like the proposals on capital, resolution planning, and long-term debt—it is worth considering whether regulatory frameworks should provide more comparable treatment for large regional banking organizations with a holding company and those without one.

The events last spring were severe, but some of the causes and consequences have already faded from the memories of many—a condition that my former boss in the Senate has referred to as “collective amnesia.”¹⁴ It is important for policymakers to remain keenly aware of the lesson from banking panics over the last two centuries, including the turmoil that we experienced in March, that the banking system cannot operate without trust—but if risks develop unchecked over time, that trust can disappear in an instant.

COMPETITION

The sixth “C” on my list is competition, specifically in the banking sector. President Biden’s *Executive Order on Promoting Competition in the American Economy* in 2021 tasked Treasury with assessing the impacts of new entrant non-bank firms on competition in consumer finance markets.¹⁵ Last November, we published a report finding, unsurprisingly, that the banking industry has grown more concentrated over time.¹⁶ As a result, we recommended that the banking agencies review their bank merger oversight policies in light of ongoing consolidation and the potential waning utility of certain traditional measurements of competition due to the evolving marketplace.

New entrant non-bank firms have largely not been subject to the kind of comprehensive regulation and supervision to which banks are subject. As a result, the growing role of these firms in financial markets is accompanied by risks related to regulatory arbitrage, data privacy and security, bias and discrimination, and consumer protection, among others. The report’s recommendations supported the efforts by the banking agencies and the CFPB to address these risks, using their relevant authorities, including increased oversight of bank-fintech partnerships, guardrails around Buy Now, Pay Later products, and increased consumer data protections. But there are some remaining outstanding issues raised by our report. More can be done to address the emerging competitive risks from the entrance of Big Tech firms into financial services, including ensuring that structures like industrial loan companies do not threaten the traditional separation of banking and commerce.

In the traditional banking space, last February, I participated in a panel discussion at the OCC’s symposium on bank mergers, just a month before the SVB failure. That discussion centered on how to evaluate the financial stability risk from bank mergers, including whether the failure of a large regional bank would affect U.S. financial stability.¹⁷ In hindsight, those questions were timelier than we realized, occurring shortly before three of the largest bank failures in U.S. history by assets, accompanied by two systemic risk exception determinations. But SVB’s systemic importance score prior to its failure was well below the threshold that would qualify a bank as systemically important,¹⁸ and, when SVB was approved to make an acquisition in 2021, it easily passed the financial stability analysis. This suggests that further improvements can be made to our methodologies for measuring the financial stability risks that a bank can pose as part of the merger review process.

CONSUMERS

Last is the seventh C, the consumer. The landscape of consumer financial products offered by financial institutions—particularly payments, credit, and deposit-taking—is shifting at an unprecedented rate, with the emergence of new technologies, intermediaries, and even new forms of payment. These developments carry significant implications for the financial system and the consumers who want to use financial products and services. They are also forcing policymakers to confront profound questions about the meaning of responsible innovation. While some of the financial risks to consumers are new, many are not.

For example, consumer data is increasingly at the heart of the financial services ecosystem. While new technologies and permissioned data sharing can expand access to beneficial financial services, designing new products and services without adequately accounting for the needs of the most vulnerable and marginalized could create or reinforce certain disparities. The rise of fintech firms and their novel uses of consumer data and technology, including AI, create the potential for new forms of discrimination, including increased opportunities for predatory targeting and price discrimination. The opacity of AI models could pose challenges for compliance with fair lending requirements and could perpetuate discrimination by using and learning from data that reflects historical biases. The large amount of consumer data being collected and used in AI applications also poses broader surveillance and privacy risks, particularly for certain communities.

As the importance of data in financial services increases, so too must consumer protections. The CFPB's proposed rulemaking implementing Section 1033 of the Dodd-Frank Act is an important step in establishing personal data rights and helping to resolve core issues that have inhibited consumers' control over their own data. Treasury has also previously recommended that the CFPB consider directly supervising data aggregators, which store vast and ever-growing amounts of consumer financial data, generally without the kind of supervision of their data practices applicable to regulated depository institutions. Longstanding regulatory and supervisory expectations to address things like model risk management and prevent discrimination or bias can address some of the risks associated with new technologies like AI.

Digital payments is another area of growing interest. Credit and debit cards remain the most prevalent instruments for consumer payments and the CFPB is working to finalize a rule aimed at reining in excessive credit card late fees. The CFPB recently issued a proposed rule to supervise large nonbank payment companies that are entering the payment markets, and it will be important to continue to address the role of Big Tech firms and nonbank payment

providers in digital payments. Treasury has recommended establishing a more comprehensive federal framework for payments regulation, to protect users and the financial system and ensure that innovation ultimately benefits consumers.¹⁹

CONCLUSION

Over the past three years, the Treasury Department has responded to a series of challenges—from a global pandemic to geopolitical tensions, to financial system instability—to protect the U.S. economy, businesses, and households.

While we have made significant progress on our economic agenda, the journey toward a fairer and more stable financial system is not over, and some are already pushing back on our efforts. There are always arguments against creating a more just and equitable economy—whether it involves addressing financial booms and busts, the escalating crisis of climate change, or the legacies of racial and economic inequality. In good times, people will say the system is working and there’s no need for more regulations. When the business cycle turns, they say the financial system is too fragile to withstand rules intended to avoid future downturns and protect our most vulnerable communities. To paraphrase an old saying, the time for financial reform “has a trick of going rotten before it is ripe.”²⁰ As history teaches us again and again, strong regulation and consumer protection are vital to ensuring that our financial system serves as a source of stability and equitable growth.

Thank you again for having me and for your time today. I’m looking forward to the conversation with my good friend Bharat Ramamurti.







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