

September 29, 2020

The Honorable Stephen Lynch  
Chairman  
House Financial Services Committee  
Task Force on Financial Technology  
Washington, DC 20515

The Honorable Tom Emmer  
Ranking Member  
House Financial Services Committee  
Task Force on Financial Technology  
Washington, DC 20515

Dear Chairman Lynch and Ranking Member Emmer:

On behalf of America's credit unions, I am writing to express credit unions views ahead of the hearing titled "License to Bank: Examining the Legal Framework Governing Who Can Lend and Process Payments in the Fintech Age." The Credit Union National Association (CUNA) represents America's credit unions and their 120 million members.

CUNA appreciates the Committee's commitment to oversight of the financial services sector by holding this hearing. The scope of this hearing, examining the legal framework and regulatory scope governing the oversight of traditional banks and other commercial businesses that are engaged in financial activity, is appropriate and timely. Credit unions are concerned that non-regulated companies are engaged in financial activities by offering products and services that are traditionally offered by credit unions and banks. These non-bank providers often strive to offer these products and services without being subject to robust consumer protection laws and regulations in place for banks and credit unions. Furthermore, we are concerned that recent rulemaking and statements from the Acting Comptroller Office of the Comptroller of the Currency (OCC) seek to make changes to rules and modify the bank charter in ways make it easier for non-bank lenders and payment companies to bypass consumer protection rules and regulations.

We understand the attraction of financial technology companies (fintech) to consumers as they seem to create novel products and services at a rapid pace. Some of these products and services are truly new while others may be a repackaging of mature products and services wrapped in a thin veneer of technology and supported by venture capital that allows for pricing that undercuts traditional service providers to rapidly gain market share. While credit unions welcome competition, we are concerned that many products and services offered by fintechs skirt state and federal consumer protection regulations by exploiting loopholes in regulations or entering into partnerships with banks where the fintech company is able to leverage a partner banks regulatory structure to its advantage.

It would seem the solution to these problems would be a federal charter for fintech companies and that is exactly what the OCC has proposed in different forms. In 2016, the OCC proposed a Special Purpose National Bank Charter for Fintech Companies (fintech charter), which would allow fintech companies to engage in banking activities. The proposal is currently mired in litigation. Recently, Acting Comptroller of the Currency, Brian Brooks, has proposed what has been called a "Payment Charter,"<sup>1</sup> but this appears to be a national money transmitter license that preempts state licenses requirement and provide a possible onramp for nonbanks to directly access to the Federal Reserve's payment clearing system. The Acting Comptroller has indicated in several forums that the OCC does not need to pursue rulemaking for the payments charter and that the Acting Comptroller can approve this charter at any time.

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<sup>1</sup> Victoria Guida, "Top regulator pushes ahead with plan to reshape banking, sparking clash with states", *Politico* (Aug 31, 2020) <https://www.politico.com/news/2020/08/31/currency-comptroller-reshape-banking-406393>.

CUNA opposes the so-called payments charter. We believe the OCC should undertake an open and transparent process in considering new charters. This process was followed with the notice and comment rulemaking process for the fintech charter, but has not been done with payments charter. The absence of public process surrounding the payments charter concerns CUNA and its members. The lack of specificity around this charter leads to questions about how the OCC would regulate such entities and what the broad implications this charter would have on the banking sector. Furthermore, this narrow-purpose charter could introduce serious risk into the payment system

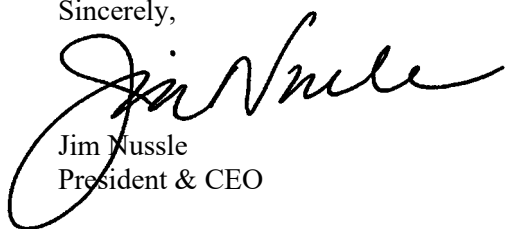
We continue to have serious concerns with banks partnering with fintechs for lending, especially when these relationships seem designed to avoid consumer protection laws. At the state level, there are licensing or registration requirements to operate within a state, state-specific interest rate limits, state-specific loan value caps, and other consumer protections. State requirements are largely enforced by state financial regulatory authorities and state attorneys general. Fintechs can use a bank as a lending partner to avoid many of the state-specific regulations, which rob state regulators of their ability to properly regulate financial activities.

In what looks like a blatant attempt to weaken state laws, in July 2020, the OCC issued a Notice of Proposed Rulemaking (NPRM) related to determining the “true lender” in partnerships between national banks and third parties, including marketplace lenders. Under the proposal, a national bank would be considered the true lender of the loan if, as of the date of origination, it is named as the lender in the loan agreement or funds the loan. CUNA has significant concerns with the “true lender” proposal as it could be exploited to promote “rent-a-charter” arrangements between payday lenders and national banks, which can be used to evade state restrictions on high interest rates or loan terms. We believe the OCC’s proposal is not in the best interest of consumers and should be withdrawn. Instead, the OCC, in coordination with its sister banking regulators, should focus its relief efforts on facilitating and promoting the fair and reasonable loan options that are offered by local-community based lenders like credit unions.

CUNA’s has long held the position that similar products and services should be regulated similarly so that consumers protection runs with a product or service, not with the entity providing the products or service. Credit unions and banks are subject to most of the same consumer protection laws. While not perfect, these consumer protection requirements do help protect consumers. Unfortunately, clever fintechs can use partnerships with banks and possibly a banking charter to avoid consumer protections with the approval of the OCC. The Committee should continue to stay focused on the OCC as their actions could cause irreparable harm to consumers and cause consumers to lose trust in the banks, which could also impact our members credit unions by association.

On behalf of America’s credit unions and their 120 million members, we look forward to further discussing privacy issues with you and the members of this Task Force.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Nussle", written in a cursive style. The signature is positioned above the printed name and title.

Jim Nussle  
President & CEO