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The Honorable Sherrod Brown  
Chairman  
Committee on Banking, Housing,  
and Urban Affairs  
United States Senate  
Washington, DC 20510

The Honorable Pat Toomey  
Ranking Member  
Committee on Banking, Housing,  
and Urban Affairs  
United States Senate  
Washington, DC 20510

Dear Chairman Brown and Ranking Member Toomey,

On behalf of America's credit unions, I am writing regarding the hearing entitled, "The Reemergence of Rent-a-Bank?" The Credit Union National Association (CUNA) represents America's credit unions and their more than 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 should lead the subcommittee to examine the legal framework and regulatory scope governing the oversight of traditional banks and other commercial businesses that are engaged in financial activity. Credit unions are concerned that non-regulated companies are engaged in financial activities through partnerships with regulated financial institutions allowing them to offer products and services that are traditionally offered by credit unions and banks, but without the regulatory safeguards that these non-financial service companies would be subject to if they were a financial institution. These so called "rent-a-bank relationships" allow non-bank providers to operate under the cloak of a regulated entity will avoid regulations that would normally be in place, often from the state level, for the products and services they offer.

### **CUNA Supports Oversight of Financial Technology Companies**

The Committee's focus on the misuse of bank charters is timely as financial technology companies (fintech) continue to pursue every possible avenue to leverage arbitrage between regulations. We understand consumers interest in fintech as these companies 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 repackage 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 bank's 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. Former Acting Comptroller of the Currency, Brian Brooks, attempted an end-around the courts by proposing a "payment charter," which appeared to be a national money transmitter license that preempts state licenses requirement and provides a possible onramp for nonbanks to directly access to the Federal Reserve's payment clearing system.

CUNA opposed the so-called payments charter and any changes to the national bank charter that would lead to entities offering financial services but subject to less regulation and providing less consumer protection than banks and credit unions. We believe the OCC should undertake an open and transparent process in considering new types of charters or even approving what appears to be traditional charters that fundamentally alter the banking landscape without full consideration of the impact on consumers and other stakeholders. This process was followed with the notice and comment rulemaking process for the fintech charter but has not been done with payments charter.

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 consumers of important protections and 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 final rule 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 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 requirements help protect consumers. Unfortunately, clever fintechs and others 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 member credit unions by association.

On behalf of America’s credit unions and their more than 120 million members, thank you for the opportunity to share our views.

Sincerely,



Jim Nussle  
President & CEO