BANK POLICY INSTITUTE

Payments Charter Without Strong Safeguards Poses Risks to the Financial System

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FinTech charters that allow tech firms to behave like banks without the appropriate safeguards in place to bind them could endanger the financial system. The policy notion of enabling tech firms to get banking charters but limiting their oversight as "banks" has been gaining traction with federal financial regulators in recent years. Former Acting Comptroller of the Currency Brian Brooks announced in spring 2020 that the OCC intended to advance a national payments charter before the end of 2020,[1] and further indicated that the OCC would be permitting this dramatic change without the benefit of a public notice and comment procedure.[2] In previous speeches, Brooks shared that he envisioned these newly chartered entities would be allowed access to the Federal Reserve's payments system.[3]

While the exact contours of a national "payments charter" have yet to be unveiled, it could take the form of FinTech firms having the benefits of a federal banking license, including federal preemption of state licensing laws, but avoiding the same set of requirements to which ordinary banks are subject, since they purport to have a more limited business model.[4] One idea has been to "unbundle" financial services by partitioning deposit-taking, payments and lending activities—the traditional activities in which banks engage. However, it's still unclear what companies would be eligible for such charters, the authority under which the OCC could issue them, or how the OCC would mitigate any potential safety and soundness or systemic risks these companies would pose. Without further clarity, there are a whole host of concerns that arise under the construct of a FinTech charter that allows deep banking system access with only limited supervision.

► BPI's Position

1). It is important for the OCC to clearly articulate and coordinate with the Federal Reserve Board on how to address any systemic risk concerns related to chartered payments companies.

For example, the OCC would need to address whether and how the chartered payments company would have access to the FRB's discount window and payments systems, which becomes of primary concern if those payments companies would not have a regulated bank holding company parent subject to the "source of strength" requirement, among other things. With ordinary banks, the FRB is able to examine the parent company's systems to evaluate the overall strength of the organization, but this would not necessarily be the case for these new federally chartered firms. This is problematic due to the potential for large technology companies with payments businesses to expand into the banking products and services without the attendant regulation.[5]

2). It is imperative that the OCC provide for a level playing field that fosters innovation, recognizing that much of the innovation in financial services comes from banks.

With the imposition of a payments charter, one concern is that chartered payments companies would be able to offer services and products in direct competition with ordinary banks, but would not have to bear the corresponding burdensome regulatory regime both with respect to payments activities and, any potential supervision or enforcement related to a non-compliant payments product or service. Furthermore, without proper supervision, which allows regulators to intervene with troubled institutions, many consumers could be blindsided when a holder of a payments charter becomes stressed. The OCC should clearly address how it plans to make sure that there is a safe and level playing field in fostering innovation in the payments space, and how it would mitigate any potential for an unfair advantage of the chartered payments company over an ordinary bank.

3). Finally, to underscore the point, charters that limit supervision of FinTech companies while offering them the benefits of a traditional bank would allow for a complete transformation of the U.S. banking system—a system that is structured the way it is to mitigate and limit the risk of economic fallout.

There are real concerns about the potential impacts that a payments charter could have on the integrity of the financial system, largely in part due to concerns about ensuring robust and equivalent supervision and consumer protection. Given recent economic uncertainty, now is not the time to be unilaterally changing the composition and risk levels in the American financial system. Instead, the OCC should press pause on any consideration of a payments charter and take a measured and thoughtful approach that involves robust dialogue through a formal, public notice and comment process.

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1 https://www.forbes.com/sites/jasonbrett/2020/05/12/occ-floats-new-payments-charter-for-stripe-paypal-and-crypto-firms/#7d985b195195

2 https://bankingjournal.aba.com/2020/06/podcast-occs-brooks-plans-to-unveil-payments-charter-1-0-this-fall/

3 https://www.natlawreview.com/article/it-s-ba-ack-occ-planning-new-fintech-charter-payments-charter-10

4 https://thefinancialbrand.com/98636/occ-comptroller-brian-brooks-fintech-charter-payments-innovation-crypto-branch/

5 https://www.cnbc.com/2020/01/03/big-tech-will-push-into-finance-in-2020-while-avoiding-bank-regulation.html