



September 29, 2020

The Honorable Stephen Lynch  
Chairman, U.S. House Task Force on Financial Technology  
2129 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Tom Emmer  
Ranking Member, U.S. House Task Force on Financial Technology  
2129 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Lynch and Ranking Member Emmer:

We write to share our concerns with the Office of the Comptroller of the Currency's (OCC) newly proposed special purpose payments charter for non-banks, as described recently by Acting Comptroller Brian Brooks.

**We oppose the OCC's effort to grant commercial companies like Amazon or Facebook a national payments charter to access to the Federal Reserve payments system and safety net.**

As detailed below, we oppose any effort by the OCC to offer a payments charter, particularly one that would ultimately grant these companies access to the Federal Reserve payments system—the most critical part of our country's financial infrastructure—and its corresponding federal safety net without protecting the financial system and consumers from the concomitant increase in systemic risk.

**Banks are innovating to serve their customers.**

We believe that innovations in financial services offer customers significant benefits, as they have throughout the history of banking. Banks have long pioneered innovations in financial services to better connect with and benefit customers by making credit more inclusive, providing more transparency around products and enhancing user experience. Today, both traditional banks and non-bank technology firms are embracing innovation, which has allowed banks and technology companies to partner in order to deliver the innovative services that customers seek while also providing for regulatory protections under the banking system.

**Innovation should not undermine systemic stability of the financial system.**

However, innovation cannot come at the cost of ensuring a safe and sound banking and payments system. A payments charter for non-banks firms raises a number of regulatory concerns—such as the continuation of the long-standing principles of the separation of banking and commerce, application of

traditional banking statutes and regulations governing safety and soundness and consumer protection, and, most significantly, the potential introduction of systemic risk into the payments system.

**Commercial companies accessing a payments charter would avoid oversight and regulations that protect the financial system and consumers.**

Specifically, a payments charter for non-bank firms raises a number of questions, including whether parent companies of the new special purpose bank would be subject to the Bank Holding Company Act (BHCA) and other relevant statutes. In particular, the failure to apply the BHCA to these companies would raise significant safety and soundness concerns by not requiring prudential regulation consisting of capital and liquidity requirements of the parent company or its subsidiaries and affiliates, no requirement for the parent to act as a source of strength to chartered entities, and no requirement to plan for recovery or resolution in severe financial situations.

Additionally, there would be potential harm to consumers should these narrowly chartered institutions not be subject to federal laws like the Federal Deposit Insurance Act, which imposes liability on directors, officers and institution-affiliated parties and has annual audit and reporting requirements, and the Federal Reserve Act which puts limits on transactions between a bank and its affiliates and limits on bank loans to insiders and related parties. Similarly, whether these chartered entities would be subject to the Community Reinvestment Act, which is designed to help ensure banks lend money and provide banking services to underserved and minority consumers, is an important issue to resolve. The potential for asymmetries in regulation across companies with different banking charters could produce regulatory arbitrage and undermine safety and soundness and consumer protection.

**A lack of safety and soundness rules will expose the financial system to significant vulnerabilities.**

Another significant question is whether these narrowly chartered firms should be able to access the Federal Reserve's payment system, which is a critical component of our nation's financial infrastructure. There is no existing framework for how best to mitigate any potential systemic risk that could be introduced by these companies, and these questions must be answered prior to any payments company being chartered by the OCC.

**A new bank charter should be subject to an open, transparent notice and comment process.**

In order to help fully understand all the potential consequences, any efforts to grant a new type of bank charter need to be conducted through an open and deliberative notice and comment process. The need for a transparent process is further heightened, given a recent court decision and continuing litigation has raised additional uncertainty around the OCC's authority to issue such charters. We also believe that Congress should have a role in these deliberations, including whether a federal money transmitter license that would preempt a patchwork of state licensing laws is practical.

The benefits of financial innovation are only realized when they are delivered responsibly, in a way that does right by customers. This means getting regulation right is critical. Regulation must be flexible enough to allow innovations to be driven from within traditional banks. We must also ensure that

customers receive the protection they deserve wherever they get their financial services through consistent regulation and oversight.

We look forward to a continued discussion around these important issues and stand ready as policymakers look to help promote responsible innovation in banking.

Sincerely,

American Bankers Association  
Bank Policy Institute  
Independent Community Bankers of America  
The Clearing House